AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-14-91
Vol. 56 No. 115

federal register

Friday
June 14, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

D

6-14-91
Vol. 56 No. 115
Pages 27403–27686

Federal Register

Friday
June 14, 1991

Briefing on How To Use the Federal Register
For information on briefings in Washington, DC, and New Orleans, LA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: July 2, at 9:00 am
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St.
Conference Room 1120,
New Orleans, LA
RESERVATIONS: Federal Information Center
1–800–366–2998

Contents

Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

Acquired Immune Deficiency Syndrome, National Commission
See National Commission on Acquired Immune Deficiency Syndrome

Agriculture Department
See Animal and Plant Health Inspection Service; Forest Service; Soil Conservation Service

Animal and Plant Health Inspection Service
NOTICES
Genetically engineered organisms for release into environment; permit applications, 27494

Antitrust Division
NOTICES
National cooperative research notifications:
Automotive Emissions Cooperative Research Venture, 27539
Cable Television Laboratories, Inc., et al., 27539

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Occupational safety and health—
Education programs, 27515

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Oklahoma, 27495
Meetings; Sunshine Act, 27556

Coast Guard
RULES
Ports and waterways safety:
Ohio River, KY; safety zone, 27409

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings; correction, 27501

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 27502
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 27501

Customs Service
RULES
Vessels in foreign and domestic trades:
Vessel and air carriers and bonded facilities not part of Automated Manifest System; cargo release notification
Correction, 27559

Defense Department
See also Navy Department
NOTICES
Meetings:
Defense Policy Board Advisory Committee, 27502
Science Board task forces, 27503
(3 documents)

Drug Enforcement Administration
PROPOSED RULES
Chemical Diversion and Trafficking Act of 1988; implementation:
Listed chemicals and certain machines; reporting and recordkeeping requirements, 27471
Precursor and essential chemicals; imports and exports 27472
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
1991 proposed aggregate, 27540
Applications, hearings, determinations, etc.:
Krebsbach, Robert, M.D., 27541

Education Department
PROPOSED RULES
Special education and rehabilitative services:
Children and youth with serious emotional disturbance program, 27481
Education of individuals with disabilities; training personnel grants, 27474
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational research program; educational research dissemination, 27572
Innovation in education program, 27651
Innovation in education program (academies for school leaders and teachers), 27648
Special programs staff and leadership personnel; training program, 27505

Employment and Training Administration
NOTICES
Adjustment assistance:
Alcan Rolled Products Co. et al., 27542
Fisher-Price, Inc., 27542
Gloray Knitting Mills, Inc., et al., 27543
Irvin Automotive/Takata, Inc., 27543
Lee Co., 27543

Energy Department
See also Hearings and Appeals Office, Energy Department
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Fernald, OH; radioactively contaminated groundwater, 27505
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Cabot Power Corp., 27506

Environmental Protection Agency
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Electric utility generating units; physical or operational changes, 27630
Pesticide programs:
Good laboratory practices standards (FIFRA); notification to Agriculture Secretary—
Worker protection standards for agricultural pesticides, 27484, 26485
(2 documents)
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 27513
Weekly receipts, 27514
Superfund; response and remedial actions, proposed settlements, etc.:
Roe Lane Tank Site, Kansas City, KS, 27514
Water pollution control:
Nonpoint source pollution management programs; coastal zones management measures guidance; availability, 27618

Executive Office of the President
See Presidential Documents

Family Support Administration
RULES
Public assistance programs:
Aid to families with dependent children (AFDC) and adult assistance programs—
Indian trust funds and Alaska Native Claims Settlement Act distributions; exclusion, 27419
NOTICES
Agency information collection activities under OMB review, 27518

Federal Aviation Administration
RULES
Airworthiness directives:
Dornier Luftfahrt GmbH, 27403
McDonnell Douglas; correction, 27559
Standard instrument approach procedures, 27404
PROPOSED RULES
Airworthiness directives:
Fairchild, 27467
Short Brothers, PLC, 27468
Terminal control areas and airport radar service areas, 27654
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Fuel tank access covers, 27549

Federal Communications Commission
RULES
Common carrier services:
Jurisdictional separations procedures—
Universal Service Fund expense allocation, 27421
Radio broadcasting:
FM station (Class C3) additional allotments and increased maximum transmitting power for Class A FM stations, 27424
Radio stations; table of assignments:
Louisiana, 27422
Mississippi, 27423
Washington, 27423
Wyoming and Nebraska, 27423
NOTICES
Agency information collection activities under OMB review, 27514

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 27556

Federal Highway Administration
NOTICES
Uniform relocation assistance and real property acquisition for Federal and federally-assisted programs:
Fixed payment for moving expenses; residential expenses, 27549

Federal Maritime Commission
PROPOSED RULES
Marine terminal operator regulations; restructuring, 27485
NOTICES
Agreements filed, etc., 27515
(2 documents)

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Endangered and threatened species:
Utah prairie dog, 27438
Marine mammals:
Walruses and polar bears; incidental take during oil and gas exploration activities in Chukchi Sea off Alaska, 27443
PROPOSED RULES
Endangered and threatened species:
Little Mariana fruit bat, etc., 27485

Food and Drug Administration
NOTICES
Color additives petitions:
Sola/Barnes-Hind, 27518
GRAS or prior-sanctioned ingredients:
Uncle Ben's Inc.; correction, 27558
Medical devices:
Device labeling requirements; "manufactured," definition; advisory opinion; correction, 27558
Meetings:
Advisory committees, panels, etc., 27558
Advisory committees, panels, etc.; correction, 27558
Prescription Drug Marketing Act of 1987; enforcement policies; correction, 27558

Forest Service
RULES
Land uses:
Landowner access, 27410
NOTICES
Environmental statements; availability, etc.:
Medicine Bow National Forest and Thunder Basin National Grassland, WY, 27494

Health and Human Services Department
See Centers for Disease Control; Family Support Administration; Food and Drug Administration; Health Resources and Services Administration; Social Security Administration

Health Resources and Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Infant Mortality Advisory Committee, 27520

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 27506, 27509
(2 documents)
Decisions and orders, 27511, 27513
(2 documents)

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Mortgage insured under section 235(r) of National Housing Act; refinancing, 27622
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 27521

Information Security Oversight Office
RULES
National security information:
Prescribed standard forms
Correction, 27559

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Gray portland cement and clinker from Venezuela, 27496
Countervailing duties:
Ceramic tile from Mexico, 27496
Gray portland cement and clinker from Venezuela, 27498

Interstate Commerce Commission
NOTICES
Meetings; Sunshine Act, 27556
Motor carriers:
Compensated intercorporate hauling operations, 27537
Rail carriers:
State intrastate rail rate authority—
Washington, 27538
Railroad operation, acquisition, construction, etc.:
South Carolina Central Railroad Co., Inc., et al., 27538
Railroad services abandonment:
KCT Railway Corp., 27538

Justice Department
See also Antitrust Division; Drug Enforcement Administration; Parole Commission
NOTICES
Pollution control; consent judgments:
Southern Foundry Supply, Inc., et al., 27539

Labor Department
See Employment and Training Administration; Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Meetings:
Burns District Advisory Council, 27535
Carson City District Advisory Council, 27536
Medford District Advisory Council, 27536
National Public Lands Advisory Council, 27536
Realty actions; sales, leases, etc.:
Oklahoma, 27537

National Commission on Acquired Immune Deficiency Syndrome
NOTICES
Meetings, 27544, 27545
(2 documents)

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 27545
Meetings:
Music Advisory Panel, 27545
Visual Arts Advisory Panel, 27546

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Light trucks, buses, and multipurpose passenger vehicles; side impact protection, 27427

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 27465
PROPOSED RULES
Fishery conservation and management:
Western Pacific pelagic; correction, 27558
NOTICES
Meetings:
Caribbean Fishery Management Council, 27499
North Pacific Fishery Management Council, 27500
Pacific Fishery Management Council, 27500
South Atlantic Fishery Management Council, 27500

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big Thicket National Preserve, TX, 27537

National Science Foundation
NOTICES
Meetings:
Materials Research Special Emphasis Panel, 27546

Ocean Science Review Panel, 27546

Navy Department
NOTICES
Privacy Act:
Systems of records, 27503

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 27546
Environmental statements; availability, etc.:
Washington Public Power Supply System, 27547
Applications, hearings, determinations, etc.:
Tulsa Gamma Ray, Inc., 27548

Parole Commission
NOTICES
Meetings; Sunshine Act, 27556

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Life insurance companies; guaranteed contract separate accounts; proposed revocation, 27543

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 27406
Single-employer plans:
Valuation of plan benefits—
Interest rates and factors, 27405

Presidential Documents
PROCLAMATIONS
Special observances:
Pediatric AIDS Awareness Week (Proc. 6305), 27685

Public Health Service
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 27557

Securities and Exchange Commission
PROPOSED RULES
Securities:
Foreign private issuers—
Financial statements; age rule and form requirements, 27562
Rights offerings to U.S. shareholders (cross-border rights offers), 27564
U.S. equity holdings; disclosure requirements, 27612
International tender and exchange offers, 27758
NOTICES
Administrative Dispute Resolution and Negotiated Rulemaking Acts; implementation, 27548
Applications, hearings, determinations, etc.:
NYCOR, Inc., 27548

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 27520

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Oneida County, ID, 27495

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas, 27407
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kansas, 27473

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration
PROPOSED RULES
Alaska; unfair competition by commonly owned carriers, 27469

Treasury Department
See also Customs Service
NOTICES
Agency information collection activities under OMB review, 27551

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Congress-Bundestag youth exchange program, 27551
Private non-profit organizations in support of international educational and cultural activities—
People with disabilities, 27554

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 27562

Part III
Environmental Protection Agency, 27618

Part IV
Department of Housing and Urban Development, 27622

Part V
Environmental Protection Agency, 27630

Part VI
Department of Education, 27648

Part VII
Department of Education, 27651

Part VIII
Department of Transportation, Federal Aviation Administration, 27654

Part IX
Department of Education, 27664

Part X
The President, 27683

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

6305 27685

14 CFR

39 (2 documents) 27403–27559

97 27404

Proposed Rules:

39 (2 documents) 27467, 27468

71 27654

91 27654

399 27469

17 CFR

Proposed Rules:

200 27582

210 27562

229 27612

230 (2 documents) 27564–27582

239 (3 documents) 27562–27582

240 (4 documents) 27562–27612

249 27612

260 27582

19 CFR

4 27559

21 CFR

Proposed Rules:

1310 27471

1313 27472

24 CFR

235 27622

29 CFR

2619 27405

2676 27406

30 CFR

904 27407

Proposed Rules:

916 27473

32 CFR

2003 27559

33 CFR

165 27409

34 CFR

Proposed Rules:

318 27474

328 27481

36 CFR

251 27410

293 27410

40 CFR

Proposed Rules:

51 27630

52 27630

60 27630

156 27484

170 (2 documents) 27484, 27485

45 CFR

233 27419

46 CFR

Proposed Rules:

515 27485

560 27485

572 27485

47 CFR

36 27421

73 (5 documents) 27422–27424

49 CFR

571 27427

50 CFR

17 27438

18 27443

672 27465

685 27558

Proposed Rules:

17 27485

Rules and Regulations

Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-04-AD; Amendment 39-7025; AD 91-12-14]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dornier 228 series airplanes. This action requires a one-time modification of the alternating current (AC) electrical power supply wiring circuitry. The existing electrical system design could cause failure of both AC inverters if one malfunctioned. The actions specified by this AD are intended to prevent complete loss of AC electrical power.

DATES: Effective July 19, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1991.

ADDRESSES: Dornier Service Bulletin No. SB-228-171, dated July 20, 1990, that is discussed in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Germany; Telephone (49.8153)-300; Facsimile (49.8153)-30.29.85. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. R. Stoer, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Dornier 228 series airplanes was published in the Federal Register on March 8, 1991 (56 FR 9910). The action proposed a one-time modification of the alternating current (AC) electrical power supply wiring circuitry in accordance with the instructions in Dornier Service Bulletin No. SB-228-171, dated July 20, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 44 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $170 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,840.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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); and 14 CFR 11.89.

§ 39.13 [Amended]

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

AD 91-12-14 Dornier: Amendment 39-7025; Docket No. 91-CE-04-AD.

Applicability: Models Dornier 228-100, Dornier 228-101, Dornier 228-200, Dornier 228-201, and Dornier 228-202 airplanes (serial numbers 7000 through 7036, and 8000 through 8050), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent complete loss of alternating current (AC) electrical power, accomplish the following:

(a) Modify the electrical AC power supply system in accordance with the instructions in Dornier Service Bulletin No. SB-228-171, dated July 20, 1990.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(d) The modification required by this AD shall be done in accordance with Dornier Service Bulletin No. SB–228–171, dated July 20, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained upon request to Dornier Luftfahrt GmbH, P.O. Box 3, D–8031 Wessling, Germany. This information may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on July 19, 1991.

Issued in Kansas City, Missouri, on May 22, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14170 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 97

[Docket No. 26547; Amdt. No. 1452]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION:

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 10, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME, § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective July 25, 1991

Flagstaff, AZ—Pulliam, VOR/DME RWY 21, Orig.
Freeport, IL—Albertus, VOR RWY 24, Amdt. 5
Freeport, IL—Albertus, NDB RWY 24, Amdt. 11
Freeport, IL—Albertus, RNAV RWY 6, Amdt. 4
Kingman, KS—Kingman Muni, VOR/DME RWY 18, Orig.
Winfield-Arkansas City, KS—Strother Field, VOR RWY 35, Amdt. 2, Cancelled
Alva, OK—Alva Muni, NDB RWY 35, Amdt. 4
Okmulgee, OK—Okmulgee Muni, VOR RWY 22, Amdt. 1
Okmulgee, OK—Okmulgee Muni, NDB RWY 17, Amdt. 3
Okmulgee, OK—Okmulgee Muni, ILS RWY 17, Amdt. 3
Wichita Falls, TX—Kickapoo Downtown Airpark, NDB–A, Amdt. 6
Wichita Falls, TX—Kickapoo Downtown Airpark, NDB RWY 35, Amdt. 2
Wichita Falls, TX—Kickapoo Downtown Airpark, RADAR–1, Amdt. 2
Wichita Falls, TX—Kickapoo Downtown Airpark, VOR/DME RNAV RWY 35, Amdt. 2

Effective June 27, 1991

Huntsville, AL—Huntsville Intl-Carl T. Jones Field, ILS RWY 18R, Amdt. 21
Telluride, CO—Telluride Regional, VOR/DME–A, Orig.
Miami, FL—Kendall-Tamiami Executive, NDB RWY 9R, Amdt. 7, Cancelled
Miami, FL—Kendall-Tamiami Executive, NDB RWY 9R, Orig.
Miami, FL—Kendall-Tamiami Executive, ILS RWY 9R, Amdt. 7
Elkins, WV—Elkins-Randolph CNTY-Jennings Randolph FLD, NDB–A, Amdt. 4 Cancelled
Manitowoc, WI—Manitowoc County, VOR RWY 17, Amdt. 13
Manitowoc, WI—Manitowoc County, VOR RWY 35, Amdt. 12
Manitowoc, WI—Manitowoc County, ILS RWY 17, Amdt. 2
Gillette, WY—Gillette-Campbell County, LOC/DME BC RWY 16, Amdt. 1

Effective May 30, 1991

Hyannis, MA—Barnstable Muni-Boardman/Polando Field, ILS RWY 15, Orig.

Effective April 30, 1991

Rocky Mount, NC—Rocky Mount-Wilson, ILS RWY 4, Amdt. 13

The FAA published an Amendment in Docket No. 26531, Amdt. No. 1450 to part 97 of the Federal Aviation Regulations (VOL 56 No. 81 Page 19259; dated April 26, 1991) under § 97.25 effective May 2, 1991, which is hereby amended as follows:

Keene, NH—Dillant-Hopkins, LOC RWY 2, Amdt. 1.

Change effective date to April 11, 1991.

[FR Doc. 91–14189 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–13–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PNGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning July 1, 1991. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after July 1, 1991, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since June 1, 1991. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after July 1, 1991, which set reflects an increase of ¼ percent in the immediate interest rate from 6¾ percent to 7 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after July 1, 1991, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

APPENDIX B—[AMENDED]

2. Rate Set 92 of appendix B is revised and Rate Set 93 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuties, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or After	Before		k_1	k_2	k_3	n_1	n_2
* * *	*	*	*	*		*		
92	6-1-91	7-1-91	6.75	1.0600	1.0475	1.0400	7	8
93	7-1-91		7.00	1.0625	1.0500	1.0400	7	8

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-14210 Filed 6-13-91; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.1(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of July 1991.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the begining of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month:	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_v
July 1991..	.075	.07375	.0725	.07125	.07	.0675	.0675	.0675	.0675	.0675	.0625	.0625	.0625	.0625	.0625	.05875

Issued at Washington, DC., on this 11th day of June 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-14209 Filed 6-13-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving a proposed amendment submitted by the State of Arkansas as a modification to its permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, concerning operations extracting coal incidental to the extraction of other minerals, revises Arkansas' rules to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Arkansas program was conditionally approved by the Secretary of the Interior on November 21, 1980. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Arkansas program was published in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning the Arkansas program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Program Amendment

By letter dated September 20, 1990 (administrative record No. AR-411), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a February 7, 1990, letter that OSM sent to Arkansas in accordance with 30 CFR 732.17(c).

Arkansas proposed to amend its program by adding new rules concerning the exemption for coal extraction incidental to the extraction of other minerals. Specifically, Arkansas proposed to amend the following sections of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC): § 702.1, scope; § 702.5, definitions; § 702.11, application requirements and procedures; § 702.12, contents of application for exemption, § 702.13, public availability of information; § 702.14, requirements for exemption; § 702.15, conditions of exemption and right of inspection and entry; § 702.16, stockpiling of minerals; § 702.17, revocation and enforcement; and § 702.18, reporting requirements.

OSM published a notice in the October 4, 1990, **FEDERAL REGISTER** (55 FR 40677) announcing receipt of the amendment and inviting public comment

on the adequacy of the proposed amendment (administrative record No. AR–430). The public comment period ended November 5, 1990.

During its review of the proposed amendment, OSM identified concerns relating to ASCMRC § 700.10(d)(10), exemption for extraction of coal incidental to the extraction of other minerals; ASCMRC §§ 702.5(a) and 702.11(a) (1) and (2), definition of "cumulative measurement period;" ASCMRC § 702.11(d), application requirements and procedures; and ASCMRC § 702.17(a), revocation and enforcement. OSM notified Arkansas of the concerns by letter dated November 14, 1990 (administrative record No. AR–431). Arkansas responded in a letter dated December 10, 1990, by submitting an amendment package (administrative record No. AR–432) which revised these proposed rules.

OSM announced receipt of the revisions to the proposed amendment in a notice in the January 2, 1991, **Federal Register** (56 FR 51). In this notice, OSM reopened the public comment period. The reopened public comment period closed on January 17, 1991.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment as submitted by Arkansas on September 20, 1990, and as revised by it on December 10, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. Revisions to Arkansas's Rules That Are Substantially Identical to the Corresponding Federal Regulations

Arkansas proposes revisions to the following rules that either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the Arkansas program.

ASCMRC 700.10(d), concerning the applicability of the Arkansas program to operations where the extraction of coal is incidental to the extraction of other minerals (corresponding Federal regulation 30 CFR 700.11(a)(4)); and

ASCMRC part 702, concerning the exemption for coal extraction incidental to the extraction of other minerals, including § 702.1, scope; § 702.5, definitions; § 702.11, application requirements and procedures; § 702.12, contents of application for exemption, § 702.13, public availability of information; § 702.14, requirements for exemption; § 702.15, conditions of exemption and right of inspection and entry; § 702.16, stockpiling of minerals; § 702.17, revocation and enforcement; and § 702.18, reporting requirements (corresponding Federal regulation 30 CFR part 702).

Because the proposed revisions to these Arkansas rules either contain language that is the same as or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the program, the Director finds that these proposed revisions to the Arkansas's rules are no less effective than the corresponding Federal regulations. Therefore, the Director approves the proposed revisions.

2. ASCMRC §§ 702.11(f) and 702.17(c), Administrative Review in Accordance with Section 29 of the Arkansas Surface Coal Mining and Reclamation Act of 1979 (Act)

Arkansas proposes at ASCMRC §§ 702.11(f) and 702.17(c)(2) that any person adversely affected by determinations made by Arkansas concerning exemptions from its Act for coal extraction incidental to the extraction of other minerals, or revocation and enforcement of these determinations, may request administrative review of such decisions in accordance with section 29 of its Act.

The corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c)(2) state that these adversely affected persons may request administrative review of such decisions "in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority."

43 CFR 4.1280 is applicable to formal administrative review of the decisions of the Director of OSM. Arkansas's referenced section 29 of its Act is also applicable to formal administrative review of decisions of the Arkansas regulatory authority.

Because Arkansas's proposed rules at ASCMRC §§ 702.11(f) and 702.17(c)(2), through their reference to section 29 of the Arkansas Act, do require that formal procedures be followed for requested administrative reviews, the Director finds that the proposed rules are no less effective than the corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c), which reference the formal administrative review procedures at 43 CFR 4.1280. The Director is approving the proposed rules.

IV. Public and Agency Comments

1. Public Comments

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

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments from various Federal and State agencies with an actual or potential interest in the Arkansas program.

By letters dated October 25 and November 8, 1990, and January 15, 1991, the U.S. Army Corp of Engineers (the Management and Disposal Division and the Real Estate Division) responded that it had no comments on the proposed amendment (administrative record Nos. AR–424, AR–428, and AR–441).

By letters dated November 7, 1990, and January 17, 1991, the U.S. Soil Conservation Service responded, respectively, that it concurs with the proposed amendment and that it had no comments on the proposed amendment (administrative record Nos. AR–427 and AR–440).

By letter dated December 26, 1990, the Arkansas Department of Pollution Control and Ecology, National Pollutant Discharge Elimination System Division, responded that it had no comments on the proposed amendment (administrative record No. AR–439).

By letter dated January 21, 1991, the U.S. Fish and Wildlife Service responded that the proposed amendment would have no significant impacts on fish and wildlife resources, and that it had no objections to the proposed amendment (administrative record No. AR–442).

By telephone conversation on January 21, 1991, the U.S. Forest Service responded that it had no comments on the proposed amendment (administrative record No. AR–443).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM solicited concurrence from EPA (administrative record No. AR–445) for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated October 15, 1990, EPA stated that it had no comments on the proposed amendment and concurred

with it (administrative record No. AR–420).

4. State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), and Arkansas Historic Preservation Program (AHPP) Comments

Pursuant to 30 CFR 732.17(h)(4), all amendments that may have an effect on historic properties are to be provided to the SHPO and ACHP for comment. OSM solicited comments from these offices. By letter dated October 8, 1990, the SHPO responded that he had no objections to the proposed amendment (administrative record No. AR–417). ACHP did not respond to OSM's solicitation for comments.

By letter dated January 17, 1991, AHPP responded that it had no objections to the proposed amendment (administrative record No. AR–444).

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by Arkansas on September 20, 1990, and as revised by it on December 10, 1990. The Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 904 codifying decisions concerning the Arkansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Requirements

1. Compliance With the National Environmental Policy Act

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

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

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Accordingly, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 7, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

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

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

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

2. Section 904.15 is amended by adding paragraph (h) as follows:

§ 904.15 Approval of regulatory program amendments.

* * * * *

(h) The revisions to the following sections of the Arkansas Surface Mining and Reclamation Code (ASCMRC), as submitted to OSM by Arkansas on September 20, 1990, and as revised by Arkansas on December 10, 1990, are approved effective June 14, 1991: ASCMRC § 700.10(d) and part 702, concerning operations extracting coal incidental to the extraction of other minerals.

[FR Doc. 91–14166 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[Regulation 91–10]

Safety Zone Regulations: Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 608.0 to 609.0. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by River Heritage Overlook Culture. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 9:30 p.m. e.d.s.t. on 04 July 1991. It terminates at 11:00 p.m. e.d.s.t. on 04 July 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO R.L. Johnson (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is CWO R.L. Johnson, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 04 July 1991 at 9:30 p.m. e.d.s.t. and end on 04 July 1991 at 11:00 p.m. e.d.s.t. The fireworks display will take place at mile 608.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. A new 165.T2026 is added to read as follows:

§ 165.T2026 Safety Zone: All waters of the Ohio River from Mile 608.0 to 609.0.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 608.0 to 609.0.

(b) *Effective date.* This regulation becomes effective at 9:30 p.m. e.d.s.t. on 4 July 1991. It terminates at 11:00 p.m. e.d.s.t. on 4 July 1991, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: May 22, 1991.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 91-14191 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 293

RIN 0596-AA31

Land Uses; Wilderness

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth the procedures, terms, and conditions governing access for landowners whose properties or property interests lie within the boundaries of the National Forest System. The intended effect is to clarify the manner in which landowners may use National Forest lands for ingress and egress and to establish rules of procedure by which the Forest Service will act on requests for access. The rule is applicable to applications for new or renewed access authorizations and to use of National Forest System lands for access that currently exists without authorization.

EFFECTIVE DATE: July 15,1991.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, Forest Service, USDA, (202) 453-8248.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to establish new regulations for access across National Forest System lands to non-federally owned lands was published in the **Federal Register** on September 28, 1988 (53 FR 37795). In addition to inviting comments on the proposed rule through the **Federal Register**, the Forest Service encouraged Regional Foresters and Forest Supervisors to notify local interested parties of the proposal and to solicit written comments. The initial comment period was to expire November 28, 1988, and was extended to close on January 28, 1989 (53 FR 48277). The proposed rule and outreach effort on the rule generated responses and suggestions from 368 entities, including 305 individuals, 12 organizations, 31 industrial representatives, 6 Federal and State agencies, 1 Member of Congress, and 13 Forest Service employees.

Comments were received on all sections of the proposed rule. All comments received have been carefully considered and are addressed in this final rulemaking. In general, the majority of the comments received were supportive of the proposed regulations. A summary of the general comments received and a discussion of their disposition are addressed first, followed by section-by-section responses to specific comments.

General Comments

Numerous respondents argued that section 1323(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (16 U.S.C. 3210), (ANILCA) is a free-standing statute guaranteeing an absolute right of access to landowners. Many respondents objected to the degree of discretion that the proposed rulemaking would make available to the authorized officer in reaching access decisions. An often repeated position was that access is a vested property right and not a permissive right to be determined or regulated by a Federal agency. While ANILCA provides a statutory entitlement to access, the entitlement is not without qualification. The access is that "as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment" of the land. Therefore, the kind of access granted is a discretionary decision of the authorized officer based upon given circumstances. While access cannot be arbitrarily and capriciously denied, it need not be treated identically for all properties.

Several respondents argued that the right of access for inholders begins with the Organic Administration Act of 1897 (16 U.S.C. 478), and that the rights of "inholders" and "actual settlers" are identical. The 1897 Act has been construed by the Attorney General as only granting access rights to actual settlers, not their heirs or assigns. See 42 Op. Atty. Gen. 127 (1962); 1980 (Counsel-INF. OP) 4A OP. O.L.C. 30. The rights of actual settlers to use existing roads are covered in 36 CFR 212.8. The Attorney General also found that even an original settler's right to construct a wagon road was subject to "such rules and regulations as may be prescribed by the Secretary of Agriculture." Thus, the final rulemaking continues to make all access requests subject to the regulations.

Similarly, a number of respondents objected to the basic thrust of the proposed rules which they perceived to be an attempt to regulate private land use. To the contrary, these rules do not purport to give the Forest Service the right to tell a landowner what use may be made of non-Federal land. The rules merely implement the authority granted by ANILCA to limit ihe mode and manner of access across the Federal land to that which the authorized officer determines to be needed for the reasonable use of the private land. The law does not require the authorized officer to allow the construction of a facility on Federal land that would be required for a use on the non-Federal land that the authorized officer considers to be an unreasonable use of the non-Federal land. The decision of the authorized officer as to the reasonable use of the land being accessed would be subject to appeal under the regulations in part 217 of this title.

Several comments were received that urged that the rule be revised to either include or specifically exclude access for holders of grazing permits, mineral permits, oil and gas leases, Federal Energy Regulatory Commission hydroprojects, or other authorized uses of National Forest lands. Since these uses are authorized uses of Federal land. not non-Federal lands. they are outside of the scope of these regulations which are applicable only for access to non-Federal lands.

Noting that special use authorizations must be consistent with Forest Plans, as provided in 16 U.S.C. 1604(i), several respondents suggested that Forest Plan standards and guidelines, developed pursuant to the National Forest Management Act (NFMA), be specifically incorporated in access decisions. A suggestion was made that the regulations include direction to follow the National Environmental Policy Act (NEPA) process in all access decisions. It is not necessary to adopt these suggestions, because compliance with NFMA and NEPA is required for all Forest Service land management actions. as set-forth in 36 CFR part 219, NEPA compliance procedures (50 FR 26078). and other direction and need not be specifically directed to access applications. The preamble to the proposed rulemaking also explained that the Forest Service will conduct

environmental analyses of access applications on a case-by-case basis.

Several respondents also expressed their concern that the Agency had not complied adequately with the requirements of Executive Order No. 12630. Although the Agency included a statement that the proposed rule had been reviewed for its effect on private land, they indicated that they disagreed with the finding that the rules had been found not to have significant taking implications. In compliance with Executive Order 12630, and this concern, a takings implication assessment was prepared for these regulations as an internal and predecisional management aid for use by Agency decisionmakers. A summary of its conclusions is included in the analysis of Regulatory and Environmental Impacts.

Section-by-Section Comments

Section 251.110. This section of the proposed rule stated that the rule was applicable to all applications for access to non-Federal land across National Forest System land. It also stated that use of existing Government-owned roads would be in accordance with the provisions of part 212 of chapter II of title 36 of the Code of Federal Regulations.

One respondent expressed concern that the proposed regulations appeared to require reauthorization or documentation of longstanding existing rights of access. These regulations cannot affect those rights-of-way that were legally established under the provisions of earlier authorities, such as the Act of July 26, 1866 (43 U.S.C. 932), nor can they affect rights that were reserved in conveyances to the United States or that were outstanding in third parties at the time the United States acquired the lands. However, the regulations are applicable to those roads constructed without authorization and to new or renewed occupancies. Access authorized by a currently valid special-use authorization will continue in effect until expiration, until there is a change in access needs that would necessitate the holder to request a change in the authorization, or until a management concern arises that would necessitate a revision of the authorization. In that event, access would be reauthorized under the guidance of these regulations. All applications for new access will be considered under these regulations. In response to these concerns, § 251.110(b) has been revised to make clear that the rules do not affect outstanding or reserved access rights, or current valid special-use authorizations.

Paragraph (c) of proposed § 251.110 directed the Agency to authorize such access as the authorized officer finds to be adequate to provide for reasonable use and enjoyment of the non-federally owned land. Twelve respondents opposed this paragraph and § 251.114(b) on the basis that it was inappropriate for a Forest Service officer to determine the kind of access that would be authorized to enable the landowner to use his or her land. As a matter of principle, the respondents objected to the Forest Service making determinations which could affect the use and value of private lands that possibly might be to the disadvantage of the landowner. A few comments indicated concerns about the consistent application of this provision due to Forest Service personnel reassignments and varying personalities. One respondent requested definition of the term "reasonable use" to limit the latitude for interpretation.

Section 1323(a) of ANILCA requires the Secretary of Agriculture to provide "such access * * * as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof * * *." Thus the law itself directs the Agency to make a decision as to the reasonable use of the non-Federal land for the purposes of determining what is reasonable access across Federal land. This provision does not authorize direct control or use of non-Federal land, but rather provides a basis for determining the appropriate private access use of the Federally owned land. The term "reasonable use" is a relative term that must be considered on a case-by-case basis. Its application and use in each individual case is subject to review through the administrative appeal process. Therefore, a definition for the term is not included in the final rule. The Agency will work with landowners to assure that their access needs are given appropriate consideration along with the protection of the National Forest lands to be crossed. Where legal access is determined to exist as reserved or outstanding rights, landowners may exercise such rights.

One of the purposes of these regulations is to provide for consistent application of the law. If a party believes that a decision has been made in an individual case that is not consistent with the facts, the decision would be subject to review through the administrative appeals process.

Paragraph (d) of this section would require that any access use of a land-disturbing nature or the use of Government-owned transportation facilities not authorized for general public use be authorized by an appropriate special-use authorization. Five respondents agreed with the provisions of this rule. No adverse comments were received. This provision is continued in the final rule, but it is corrected to also include the use of road-use permits as an authorizing document, an unintended omission in the proposed rule.

Paragraph (f) excluded conservation units in Alaska from the effect of these rules. One respondent indicated that the provisions of these regulations should be made applicable to those non-federally owned inholdings within Conservation Units that are covered by section 1110(b) of the Alaska National Interest Lands Conservation Act. The Department agrees with this recommendation and language has been added to extend the scope of these rules to include those inholdings.

Section 251.111 Definitions. This section defined several terms used in the rules. Five respondents opposed the definition of "access" in that it excluded rights-of-way for utilities or other services. The proposed regulations are based on section 1323(a) and the definition of access in the previously cited 1982 Attorney General's opinion. Utility and service rights-of-way are beyond the intent and purpose of the statutory authorities pertaining to access. As appropriate, and upon proper application by the landowner or service-providers, utility and other services may be authorized under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) (FLPMA), or other authority, and may be placed under or adjacent to a road or other access facility. Accordingly, this definition is not changed.

One respondent advanced the theory that legislative history and other sources indicate an intent by Congress to establish that "access" means "road access". Although road access may indeed be appropriate in many situations, the law and the legislative history of section 1323(a) provide no basis on which to limit the definition to road access. Therefore, the final rule retains the definition of "access" as proposed.

Many respondents opposed the definition of "adequate access" as clumsy and overly restrictive and provided constructive suggestions on alternative wording to clarify the term. The final rule contains a modified definition based on these suggestions.

Three respondents urged that the definition of "Landowner(s)" be expanded to include anyone owning a non-Federal land interest. The final rule adopts this suggestion.

Another respondent suggested that the rule clarify that lands held in trust by the Government for Native American landowners are not affected by these proposed rules. This suggestion has not been adopted. These lands have been conveyed to the Indians by a patent and share most of the characteristics of other non-Federal lands. Moreover, section 1323(a) of ANILCA did not provide for an exception for these lands.

Section 251.112 Application Requirements. This section of the proposed rule required the application to conform to the requirements of 36 CFR 251.54 and to include a statement of the intended and historical modes of access. Three respondents objected to the proposed rule requiring landowners to include information on historical and present uses of the land to be accessed, expressing a concern that such a requirement is irrelevant to current access needs and could be construed as an effort by the FS to limit access to historic or present levels.

In the proposed rule, information on the historic use was one of the factors to be considered in § 251.112(b) in the determination of reasonable use and enjoyment of the non-Federal owned land. For the reasons set forth later in the discussion of the changes made to that section, this information would no longer be required when the land is completely surrounded by National Forest land. However, where the possibility exists that access rights over non-Federal land may exist, information is needed on those rights to allow the Forest Service to determine access needs over National Forest System lands. The final rule has been revised to require historic access information only when the possibility exists that the landowner may have access rights across adjoining non-Federal lands.

One respondent expressed concern over the applicability of provisions of 36 CFR 251.54(i) regarding denial of applications. This respondent asserted that access applications may not be denied since ANILCA section 1323(a) guarantees adequate access. Experience in implementing section 1323(a) since its enactment has demonstrated that there are situations where applications have been denied for reasons cited in § 251.54(i); however, none of these denials are known to have resulted in landowners not having adequate access to their property. The Department agrees that section 1323(a) prevents the use of the current regulations to totally deny access, but it does not prevent its use to deny an application for a route across National Forest land when adequate access is available, or can be made available, over another route or by alternative means. Thus, no revision concerning this point was made in the final rule. However, § 251.112 is further subdivided and reorganized in the final rule to improve its readability.

Section 251.113 Instrument of Authorization. This section of the proposed rule provided that access would be authorized by use of a special-use authorization or, where applicable, an easement in accordance with 36 CFR part 212.

Ten respondents indicated unqualified agreement with the rule as written. However, other respondents objected to the provision to authorize access by special-use authorization, requesting instead that access be authorized by easement. As defined in 36 CFR 251.51 (1988) the term "special use authorization" means "a permit, term permit, lease, or easement * * *." Thus, the term "special-use authorization" is sufficiently broad to respond to the concern, and the use of the term continues in the final rule.

Several respondents indicated that they considered the requirement to secure a special-use authorization as a significant change in direction by the Forest Service. They stated that landowners had not been required to obtain such an authorization in the past. A review of the regulations shows that permits have been required by the Secretary since as early as 1911 and possibly earlier. Regulation L–36 issued March 18, 1911, by then Secretary of Agriculture James Wilson, required that, with the exception of state or county roads, "permits are necessary for the construction of all wagon roads over (National Forest) lands." This requirement has been continued and expanded in all subsequent regulations and is retained in the final rule.

Section 251.114 Criteria, Terms and Conditions. The proposed rule established criteria for determining when an access grant is required and when it is discretionary, provided criteria for determining reasonable use and enjoyment, and established a requirement that landowners provide reciprocal rights-of-way needed by the Agency and upgrade existing roads where necessary to accommodate the additional traffic generated by the development of the private land. It also provided direction for authorizing access through Wilderness. This section generated the largest number of comments on the proposed rule. Forty-seven respondents provided suggestions or commented on this section. Responses received were addressed to specific criteria, terms, and conditions and are discussed by paragraph below.

Paragraph (a) provided that, where there is existing access to a property, access grants across National Forest lands are discretionary. Three respondents agreed that where access exists, the Agency should have no responsibility to provide additional access. Nine respondents agreed in principle, but expressed concern that existing access may not be economical, adequate, or feasible based on a landowner's changing needs. Several respondents suggested the addition of the word "adequate" to overcome their concerns.

The Agency has no obligation to provide a landowner with a less costly or a more economically advantageous access where other access exists which can be utilized or made adequate through the landowner's efforts and without Forest Service involvement. Nevertheless, as a matter of practice, the Agency works with landowners, who have indicated that a change in access routes is desired, to develop and evaluate alternatives to make an environmentally sound access decision. While the Agency may have no obligation to provide access over alternative routes, this rule does not prevent it from doing so when it is mutually beneficial.

Having considered these comments, the Department feels that the rule should address this issue by clearly specifying that no obligation exists in those cases where the access across other non-National Forest land or public roads provides adequate access.

This provision has been moved in the final rule to § 251.110 and designated as paragraph (g) because it is more appropriate to that section. The other paragraphs in § 251.114 have been redesignated in the final rule as the result of this change.

Paragraph (b) of the proposed rule established criteria for the authorizing officer to use in determining what constitutes reasonable use and enjoyment of non-Federal land. Three respondents supported paragraph (b) as proposed, stating that the text assures protection of Federal lands and resources.

Nine respondents objected to this provision, stating that a Forest Service determination of need, or of reasonable use and enjoyment of non-Federal lands, is a Federal pre-emption of local zoning authority and an intrusion into private affairs. As noted in the discussion of general comments. Section 1323(a) of ANILCA requires the Secretary of Agriculture to provide such access as

the Secretary deems adequate to accommodate the reasonable use and enjoyment of the land; therefore, a determination of what constitutes reasonable use and enjoyment must be made. It is not the intent of this rulemaking to regulate the uses made on non-Federal land; that is a function of the State and local governments. A landowner's use of non-Federal land is limited by these regulations only to the extent that the facilities and modes of access authorized on the Federal land limit the use and enjoyment of the non-Federal land to that which is determined to be reasonable by the authorizing officer. The authorized officer's determination of what constitutes reasonable use and enjoyment of the non-Federal property is only pertinent to the decisionmaking process on the use to be made of the Federal land. The final rule retains the provision for the authorizing officer to determine what constitutes reasonable use and enjoyment of the non-Federal property because that is what the statute requires.

Others suggested that commercial forest management and mineral development be stated clearly as reasonable uses of private inholdings. Whether a particular use is reasonable or unreasonable depends on the characteristics of the individual piece of property and must be decided on a case-by-case basis. The final rule does not include a list of uses that are to be considered as reasonable uses in all cases, because it is very unlikely that a given use would always be a reasonable use on all non-Federal parcels of land.

Seven respondents objected to the reliance on the past use of the property as determining the reasonable use of the property. They stated that the landowner would not have the option of implementing new uses and would be limited to the access exercised for past uses. In effect, they argued this would result in a freeze of private land uses at current levels. These concerns were considered to be valid and as a result, this provision is not included in the final rulemaking.

For essentially the same reasons, several respondents expressed concern with paragraph (b)(2) in regard to the level of use existing on the date of designation in a congressionally designated area. After review of the comments, this paragraph has been determined to be unnecessarily restrictive and has been deleted.

Several respondents objected to the provisions of paragraph (b)(3) which provided that to be considered a reasonable use of the private land, the use must be appropriate and in keeping with the uses on surrounding land. These respondents expressed the view that the ANILCA section 1323(a) guarantee of access is absolute and adequate access must be granted even if the access results in some degradation or is not in keeping with the uses of adjacent Federal lands. This view was not accepted since the plain language of section 1323(a) clearly establishes that the access provided for is "subject to such terms and conditions as the Secretary of Agriculture may prescribe," including the rules and regulations applicable to ingress and egress to or from the National Forest System. The final rule omits paragraph (b)(3), but paragraph (a) of § 251.114 incorporates the contemporaneous use of similarly situated land as a basis for determining reasonable use and enjoyment of the property.

Paragraph (c) of proposed § 251.114 would require a landowner to pay an appropriate fee for an access authorization in accordance with the provisions of § 251.57 of this part. Six respondents commented on the fee requirements of this section. Four supported the proposed rule as written, as being consistent with the management of special uses on National Forest System lands. One respondent stated that imposition of a fee could be considered an unconstitutional taking of a right, if the landowner could not afford the fee. The requirement for payment of fees for the use of National Forest System lands is well established in law, executive policy, and in the regulations of the Secretary of Agriculture. Congress has indicated in the Federal Land Policy and Management Act that it is the policy of the United States that it receive fair market value of the uses of the public lands and their resources unless otherwise provided by law. In the absence of any authority to not charge an appropriate fee, the final rule retains this section as consistent with statutory authority and the intent of Congress.

Another respondent expressed the view that it would be inappropriate and illegal to charge for rights-of-way established pursuant to Revised Statute 2477 (43 U.S.C. 932). This is correct. Rights-of-way established under Revised Statute 2477 are an outstanding right and, as such, are not subject to these regulations. This concern is addressed by addition of language to § 251.10(b) which clearly states that rules do not apply to outstanding access rights.

Paragraph (d) of this section proposed that the landowner may be required to provide a reciprocal grant of access across the landowner's property where such a right is deemed necessary or desirable by the authorized officer. Eighteen respondents addressed this requirement. Six supported the proposed rule as an appropriate provision to help ensure that the public's access needs to the National Forests are attained. Twelve respondents raised a variety of concerns and objections, ranging from the nature of the reciprocal right-of-way instruments, to allegations that this section exceeded statutory authority. Others stated that it would be unreasonable to require a reciprocal grant when access is granted to the mineral estate owner, if the surface and subsurface estates are separately owned. Concern was expressed also that landowners would be forced to forego the acquisition of access to avoid being required to grant reciprocal rights-of-way that would diminish the value of their land or reduce their control of their lands. Several respondents expressed a concern that the Government would require the conveyance of a right-of-way by the landowner that was more valuable than the right being granted by the Government.

The requirement for a reciprocal right-of-way is currently included in 36 CFR 251.63 and is restated here to avoid any question of its applicability to grants for construction or use of non-Federal access facilities as well as to use of existing forest development roads. Authority for this condition to be imposed is within the broad authority of the Secretary of Agriculture as provided by the Acts of June 1, 1897; Title V, FLPMA; and Section 1323(a) of ANILCA. The Attorney General reviewed the legality of requiring reciprocal rights in his opinion dated February 1, 1962. He concluded that the Secretary has the discretionary authority to require persons other than actual settlers residing within the National Forests to grant reciprocal rights to the United States for the privilege of using existing roads or receiving a permit to construct roads across the National Forests. Such a requirement is considered to be a good business practice by most landowners and is widely practiced between private landowners or corporations with intermingled ownerships.

When requiring the grant of a right-of-way, the Agency cannot require owners of a partial estate to convey rights they do not possess. For example, where an owner of a mineral estate seeks access, and a reciprocal right-of-way is needed by the United States, the Agency must decide whether to issue the authorization without obtaining a reciprocal right-of-way at that time, or obtain a reciprocal right-of-way as to the partial estate, and obtain the

remaining rights under other acquisition procedures.

While the grant of an easement across private land encumbers the management of that land to a certain extent, the grant of an easement across Federal land also affects the management of that land. It is not reasonable for a landowner to expect a ready grant of access across Federal land while refusing to grant access to the Federal land across the private land. The Government does have other tools available to it to acquire access over private land. However, the Department believes it is not a wise use of public funds to force the government to incur costs to condemn a right-of-way, while granting access to the party forcing the Government to incur the cost of condemning access.

Where reciprocity is required, landowner access is provided by easement and the Agency would obtain its access by easement also, consistent with standing operating guidelines. The fair market value of each easement will be determined by standard appraisal practices. If the value of the right-of-way obtained by the Government exceeds the value of the right-of-way granted, the difference in value would be paid to the landowner by the Forest Service. If the value of the right-of-way across the Government land exceeds the value of the right-of-way across the private land, an appropriate adjustment will be made in the fee charged for the special-use authorization. Waiver of all or part of the fee payment for the rights-of-way granted by the Government in consideration for grant of reciprocal rights-of-way is provided for under 36 CFR 251.57(b)(5). In response to these concerns, the rule has been revised at § 251.114(c) to clarify that compensation will be received by the landowner for any rights-of-way granted.

One respondent opposed paragraph (d) on grounds that section 1323(a) places an obligation on the Agency to provide access, and therefore conditioning the access right on provision of public benefits through reciprocity is an unnecessary requirement for the exercise of the landowner's statutory access rights, and therefore is unlawful. The Department has reviewed the concern and concluded for the reasons previously stated that the statute does not grant an absolute right of access and that a provision for reciprocity is well within the authority of the Secretary of Agriculture under the authorities cited.

Those respondents objecting to paragraph (d) were concerned that authorized officers may arbitrarily impose reciprocity without consideration of other alternatives and without regard to the effects of such rights-of-way on private lands. In reaching a decision to require a reciprocal right-of-way, the Forest Service is obligated, as it is in any other right-of-way acquisition, to support its decision through analysis of alternatives, and to consider with the landowner the location, standards, and similar pertinent matters to reduce and mitigate the effects of the right-of-way on non-Federal lands and their management as is reasonably and legally possible.

For the reasons stated above, the requirement for reciprocal right-of-way is continued in the final rulemaking, with modification to assure that any exchange considers the value of the rights-of-way being exchanged.

Paragraph (e) of the proposed rule made it possible for the authorized officer to require the landowner to construct new roads or reconstruct existing roads to the minimum standard required by local public road authorities for public roads. It also provided that the authorized officer could require the landowner to arrange for the road to be part of the public road system or form a local improvement district to assume the responsibility for the operation and maintenance of the road.

One respondent agreed with this provision. Twelve respondents expressed a general concern that the provision placed an undue, perhaps punishing, burden on landowners in the form of costs when public access standards are higher than those reasonable and appropriate for the individual landowner's access needs.

Most comments also advocated the principle that those benefiting from road access should pay the costs, rather than impose such costs on landowners. One respondent pointed out that landowners have no authority to require public road agencies to accept a road.

The comments received indicate the proposed rulemaking did not explain the factual situation adequately. In many situations throughout the National Forest System, a developer acquires permission to build or improve a road through National Forest land to serve a subdivision. The developer then sells off the lots, leaves the area, and allows the authorization to expire without making any provision for the continuing maintenance needs of the private property owners in the subdivision. As the use of non-Federal lands expands, becoming intensive in many cases, the landowners typically look to a government entity for their maintenance and reconstruction needs. States and counties are reluctant to add such roads to the public road system, since these roads often serve comparatively few people, who are often not residents of the county, and since the county's road funds can be better spent in areas that serve more people for the same costs. Increasingly, pressure is exerted on the Forest Service to assume the responsibilities of public road agencies for individuals, yet the Forest Service is not a public road agency and has no authority or financing to function as a public road agency. The purpose of this section is to provide assurance that the burden of accommodating the needs of non-National Forest traffic does not fall to the U.S. Government by default, but remains with the State and local public road authorities.

It should be noted that paragraph (e) is a limited discretionary provision applicable to private use of National Forest System roads, which access non-Federal roads, and exceed safe capacity or will cause damage to the National Forest roadway. Thus, the rule cannot be used to require non-Federal landowners to assume the cost of higher standards required by road traffic arising from the public use of National Forest lands. Also it should be noted that where Forest-user or Forest management traffic is, or becomes, significant and the appropriate public road agency has refused to assume jurisdiction, the Forest Service can, in appropriate circumstances, assume jurisdiction.

In the final rule paragraph (e), designated as paragraph (d), has been revised by removing the reference to "public" traffic from the first phrase, making it clear that these requirements would occur only in response to the traffic arising from the use of the non-Federal land. Also, the phrase permitting the Forest Service to require the landowner to perform such reconstruction as necessary has been revised to read "as necessary to bring the road to a safe and adequate standard." The sentence requiring a landowner to arrange for a road to be made a part of a local public road system has also been revised to be consistent with the above change. Paragraph (d) of the final rule requires a landowner to provide for the operation and maintenance of a road, which could be done by arranging for the road to be made a part of a local public road system or by formation of a local road improvement district.

Paragraph (f) of proposed § 251.114 required landowners using existing forest development roads for access to their land to perform such reconstruction as is needed to accommodate such traffic in a safe

manner. It also required the landowner to enter a cooperative maintenance agreement with the Government when the increased traffic required reconstruction of the road if the appropriate public road agency would not assume responsibility for the maintenance of the road.

Existing forest development system roads, constructed and maintained to a standard that is adequate to meet the needs of the Forest Service for National Forest management and for Forest-user traffic, often are relied upon by landowners for access to private land. As these privately owned lands have been developed and subdivided, the traffic generated by the private use has increased to the point that it is causing more impact on the roads than the National Forest traffic.

One respondent urged that all users involved in use of Forest development roads cooperatively maintain them. In response, paragraph (f) of the proposed rule, redesignated as paragraph (c) in the final rule, has been modified to make it clear that other landowners using the road for access may also be required to participate in the reconstruction and maintenance of the road when needed to accommodate traffic generated by the developments on their land.

Paragraph (g) of proposed § 251.114 established requirements that an access applicant must satisfy before a special-use authorization would be issued. Under the proposed rule, an applicant would be required to demonstrate that alternate access was not already available to the landowner, that the proposed route minimized impacts on resources, and that the location and method of access was compatible with the management of areas protected by Federal statute.

Many respondents commented on this paragraph. In general, the comments either supported the proposed rule provisions directed at protecting National Forest System lands and resources and mitigating access impacts, or expressed concerns over paragraphs (g)(1) and (g)(4) regarding availability of alternative access opportunities and rights.

Six respondents disagreed with the paragraph requiring the landowner to demonstrate the lack of any existing rights or routes of access available by deed or under State or common law. They asserted that section 1323(a) guarantees adequate access to landowners; therefore, the burden of demonstrating that adequate access currently exists is a Forest Service responsibility and burden, not the landowners.

Section 1323(a) requires the Secretary, subject to such terms and conditions as may be prescribed, to provide adequate access to non-Federal lands. The Agency needs to know all the access opportunities that exist for a property in order to determine if access must be granted across National Forest land. The law does not require the Secretary to provide access if the land already has adequate access. Providing the factual information needed for the analysis is the responsibility of the applicant. The Agency has no authority to assume the responsibilities of, or expend Federal funds on behalf of, private interests. Thus, the gathering of information regarding access rights or routes available to a landowner by deed, or under State or common law, is a responsibility of the applicant, and this paragraph, redesignated as (f)(1), is retained in the final rule. However, the Agency will cooperate with landowners through information sharing and guidance as appropriate.

Five respondents addressed the requirement that the route be so located as to minimize adverse impacts on soils, fish, wildlife, and scenic, cultural, and other values of the Federal land. They were generally supportive of the requirement, but expressed concern that this provision not be used to make a route so expensive as to in effect deny access. The cost of mitigation measures is considered by the Forest Service in the analysis of alternate routes or modes of access. However, there is no requirement that the selected route or method of access be the most economical route or method of access. If a landowner believes that requirements established as the result of the environmental impact analysis and subsequently required by the authorized officer are unreasonable, the findings and the decision are subject to both administrative appeal and to review by the courts.

One respondent suggested that threatened and endangered species be added to the list of items to be considered. This suggestion has been adopted and paragraph (f)(2) of the final rule now includes threatened and endangered species in the listing.

Three respondents felt that the requirement in paragraph (g)(3), that the location and method of access be consistent with the management of any area protected by Federal statute, conflicts with the access assurance of section 1323(a) of ANILCA, and subordinates section 1323(a) to other statutes. While ANILCA does direct the grant of access, it also gives the Secretary the authority to require reasonable terms and conditions, including conformity to management plans for the area. In the final rule this paragraph is redesignated as (f)(3) and the words "as consistent as reasonably possible with the management of congressionally designated areas" have been added to recognize the limits resulting from ANILCA. A sentence has also been added that requires that Forest Land and Resource Management Plans be amended if the access grant would be inconsistent with the plan.

One respondent pointed out that all lands within the National Forest System are protected by Federal statute; therefore, paragraph (g)(3) was relatively meaningless as written. The final rule has been modified to clarify that the need for consistency is with National Forest System land management plans and in congressionally designated areas, which is a term defined in this rulemaking.

Paragraph (g)(4) of the proposed rule required that, where there are existing access routes across adjacent non-Federal land or when the best route of access is across adjacent non-Federal land, the applicant must demonstrate that all legal recourse has been exhausted before access will be granted across National Forest System lands.

Eight respondents objected to this requirement. Principally, the objections were to the requirement for exhausting all legal recourse in efforts to secure non-Federal access. The point was made that this provision could be interpreted to require landowners to endure the costs and delays of futile litigation, even if there were no chance of succeeding, to demonstrate that adjacent non-Federal routes are not available. These respondents felt strongly that the rule should not require litigation if the Agency can determine from the documents presented that there is little reason to believe that the effort will be successful. The Department agrees. The final rule modifies the requirement in paragraph (f)(4) by adding the phrase the landowner has demonstrated that legal recourse to obtain reasonable access "has little chance of success."

Paragraph (h) of proposed § 251.114 provided guidelines to the authorizing officer on the granting of access authorizations in units of the National Wilderness Preservation System administered by the Forest Service. This paragraph generated very detailed responses, both supporting and objecting to the language. Providing access through wilderness areas brings out strongly held views. Comments received are described in detail, followed by the Department's response.

Proposed paragraph (h)(1) of this section required the authorized officer to consider access by air, trail, or over water as adequate access if such mode of travel had been used traditionally for access to similar situated properties in wilderness areas. Eleven respondents objected in general to this paragraph for the same reasons that were expressed about § 251.114(b)(1). They expressed concern that this requirement did not consider that land uses evolve over a period of time and that limiting the mode of access to that used historically was an improper action. The Department agrees. One other respondent mentioned that sometimes a change in access mode from that traditionally used could result in lessening the impact on the Wilderness. We agree with this concept and have incorporated it in the final rule.

Proposed paragraph (h)(2) of this section provided that generally an increase in motorized use above that in use at the time the Federal land became part of the National Wilderness System would not be authorized, unless such use would not increase the impact on the wilderness. Eleven respondents indicated their support for this concept, while seven respondents objected to this paragraph. In general, the objections were directed to those lands that had not been accessed or developed prior to the designation of the Federal land as Wilderness. Under this direction, land without motorized access might be denied motorized access regardless of the reasonable use of the non-Federal land. We agree with this conclusion and have removed this provision from the final rule.

Paragraph (h)(3) of the proposed rule required the authorized officer to identify and authorize only that increased level of access that would result in the least permanent impact on the primitive character of the Federal land. Three respondents indicated agreement with this paragraph. One comment expressed confusion over the meaning of the phrase "least permanent" which has been clarified in the final rule.

Proposed paragraph (h)(4) directed the authorizing officer to give preference to authorizing the use of animals or other nonmotorized modes of transportation when such mode of travel is commensurate with the proposed use of the private land. One respondent felt that this paragraph might conflict with the previous paragraphs in § 251.114(h), but did not disagree with it.

Proposed paragraph (h)(5) directed the authorizing officer to include the exchange of the private land as one of the alternatives to be considered in the analysis of an access application. Two respondents indicated their support for using land exchange as an alternative to granting access authorizations. Two respondents indicated their concern that an exchange would be coerced by withholding access and that a denial of access would also be used to devalue the private property. The acceptance of any exchange offer would be voluntary on the part of the landowner and, if accepted, would be in lieu of exercising the right of access to the property. If an exchange alternative is agreed upon, the property would be valued as having access.

One respondent recommended that all land exchange costs in wilderness be paid by the Agency. This option is available now to the Forest Service in negotiating exchanges. A draft rulemaking regarding this option was published August 18, 1989 (54 FR 34368) as the result of the Federal Land Exchange Facilitation Act of 1988 (43 U.S.C. 1716).

While this Department is firmly committed to preserving the wilderness character of these designated areas and recognize that the several Acts establishing Wilderness areas contain specific direction concerning management of these designated areas, we are equally cognizant of the fact that we cannot, under ANILCA, impose substantially more stringent requirements on access through wilderness than access through other National Forest System lands. Therefore, we have carefully reexamined this entire paragraph to ensure that the rule reflects this principle.

As a result, proposed paragraph (h), designated as (g) in the final rule, has been substantially revised, but the essential direction of the proposed rule is maintained. Statutory designation of wilderness does impose additional considerations that the authorizing officer must take into account when acting on an application for access through wilderness. A concern was raised as to whether these considerations should be more stringent than the criteria which apply to access through nonwilderness areas. The Department believes that the proper context for criteria, terms, and conditions governing access through wilderness areas should be an extension of those governing general access. Thus, in the final rule, the redesignated paragraph (g) has been revised to require the authorizing officer to consider 3 additional factors.

Paragraph (g)(1) requires consideration of those means of access which have been or are being customarily used with respect to similarly situated land. Traditional modes of access, including air, trail or over water, through wilderness should be considered in determining the modes of access but should not be the exclusive criteria. The phrase "used for similar purposes" has been added to the provision to tie the mode of access to the type of use, rather than the history of the property being accessed.

Paragraph (g)(2) retains the direction in paragraph (h)(3) of the proposed rule requiring consideration of routes and modes of travel which would cause the least lasting impact on the wilderness, but this paragraph has been modified to respond to comments to clarify the meaning of the phrase "least permanent impact" and to emphasize that any decision on routes and modes of travel must provide for the reasonable use of the non-Federal land. This provision also incorporates the concept found in paragraph (h)(4) of the proposed rule, requiring consideration of nonmotorized modes of transportation.

Paragraph (g)(3) retains the direction found in paragraph (h)(5) of the proposed rule requiring examination of land exchanges in order to modify or eliminate the need to use wilderness areas for access. However, this provision has been broadened by substituting the term "land acquisition" for "land exchange" to recognize acquisition by purchase and donation as provided in section 5 of the Wilderness Act (16 U.S.C. 1134).

Section 293.12 Access to Surrounded State and Private Lands. The proposed rule also included corollary proposed amendments to 36 CFR 293.12. The proposed rule provided direction that owners of land completely surrounded by National Forest Wilderness shall be given access as provided in subpart D of part 251.

Many respondents supported this amendment. However, two respondents argued that section 1323(a) of ANILCA replaced the provisions of the Wilderness Act and that a more liberal interpretation of the access provisions of the Wilderness Act was necessary. Since section 1323(a) did not specifically repeal or modify the Wilderness Act, the two laws must be read together in the determination of the intent of Congress. There is no evidence to support the view that Congress intended landowners within Wilderness to be treated differently from other landowners. Therefore, the requirement that access to non-Federal lands within Wilderness be governed by the 36 CFR part 251, subpart D rules is adopted without change.

One respondent suggested that the title of this section should be revised to read "Wilderness-Non-Federal Areas." The wording is left unchanged in the final rule as "Access to surrounded State and private lands" because this is identical to the language used in the Wilderness Act.

Regulatory and Environmental Impact

This rule has been reviewed under USDA procedures and Executive Order 12291 and it has been determined that this rule is not a major rule. Little or no effect on the economy will result from this regulation.

This action also will not have a significant economic impact on a substantial number of small entities. Furthermore, it does not result directly in additional procedures or paperwork not already required by law. Special-use application and authorization procedures applicable to this rule are already cleared for the uses of this rule under 36 CFR part 251, subpart B, and have been assigned OMB Control No. 0596–0082. The specification under § 251.112(b) that the landowner disclose historic access information in the application implements the requirement for additional information under § 251.54(e)(5) and therefore does not constitute a new information requirement. In the final rule, a new paragraph (c) has been added to § 251.12 to provide notice that the information requirements of new subpart D are already cleared under subpart B.

The proposed rule sets forth administrative procedures that the Forest Service will follow in authorizing and administering use of National Forest lands. Based on both experience and environmental analysis, the rule in and of itself will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4; 7 CFR 1b.3(a)(1)). The Forest Service will conduct site specific environmental analysis of applications for access on a case-by-case basis.

This rule has been reviewed for its effects on private property rights in accordance with Executive Order 12630 concerning the just compensation clause of the fifth amendment and has been found not to have significant takings implications. These rules apply principally to the use of Federal land, not private land. Existing access rights across National Forest lands are not affected.

Section 1323(a) of ANILCA and other earlier laws did not create any new property rights, only a mechanism to obtain access. The law requires that owners of non-federally owned land be granted access to such lands, provided the owner complies with rules and regulations applicable to ingress or egress to or from the National Forest System. This rule provides those terms and conditions for the occupancy and use of National Forest land, not private land. Therefore, the rules are not a taking of private rights and do not have significant taking implications.

List of Subjects

36 CFR Part 251

Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 293

National forests, Wilderness areas.

Therefore, for the reasons set forth in the preamble, title 36, chapter II, parts 251 and 293 of the Code of Federal Regulations are amended as follows:

PART 251—LAND USES

1. The authority citation for part 251 is revised to read as follows:

Authority: 16 U.S.C. 472, 551, 1134, 3170, 3210; 30 U.S.C. 185; and 43 U.S.C. 1740, unless otherwise noted.

2. Add a new subpart D—Access to Non-Federal Lands to read as follows:

SUBPART D—ACCESS TO NON-FEDERAL LANDS

Sec.

251.110 Scope and application.
251.111 Definitions.
251.112 Application requirements.
251.113 Instrument of authorization.
251.114 Criteria, terms, and conditions.

Subpart D—Access to Non-Federal Lands

§ 251.110 Scope and application.

(a) The regulations in this subpart set forth the procedures by which landowners may apply for access across National Forest System lands and the terms and conditions that govern any special use or other authorization that is issued by the Forest Service to permit such access.

(b) These regulations apply to access across all National Forest System lands, including Congressionally designated areas, and supplement the regulations in subpart B of this part, and in parts 212 and 293 of this chapter. The regulations of this Subpart do not affect rights-of-way established under authority of R.S. 2477 (43 U.S.C. 932); rights-of-way transferred to States under 23 U.S.C. 317; access rights outstanding in third parties at the time the United States acquired the land; or the rights reserved in conveyances to the United States and in other easements granted by an authorized officer of the Forest Service. Except for the aforementioned rights-of-way, currently valid special-use authorizations will become subject to the rules of this subpart upon expiration, termination, reversion, modification, or reauthorization.

(c) Subject to the terms and conditions contained in this part and in parts 212 and 293 of this chapter, as appropriate, landowners shall be authorized such access as the authorized officer deems to be adequate to secure them the reasonable use and enjoyment of their land.

(d) In those cases where a landowner's ingress or egress across National Forest System lands would require surface disturbance or would require the use of Government-owned roads, trails, or transportation facilities not authorized for general public use, the landowner must apply for and receive a special-use or road-use authorization documenting the occupancy and use authorized on National Forest System lands or facilities and identifying the landowner's rights, privileges, responsibilities, and obligations.

(e) Where ingress and egress will require the use of existing Government-owned roads, trails, or other transportation facilities which are open and available for general public use, use by the landowner shall be in accordance with the provisions of part 212 of this chapter.

(f) The rules of this subpart do not apply to access within conservation system units in Alaska which are subject to title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101), except for access to inholdings authorized by section 1110(b) of that Act.

(g) Where there is existing access or a right of access to a property over non-National Forest land or over public roads that is adequate or that can be made adequate, there is no obligation to grant additional access through National Forest System lands.

§ 251.111 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

Access means the ability of landowners to have ingress and egress to their lands. It does not include rights-of-way for power lines or other utilities.

Adequate access means a route and method of access to non-Federal land

that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land and that minimizes damage or disturbance to National Forest System lands and resources.

Congressionally designated area means lands which are within the boundaries of a component of the National Wilderness Preservation System, National Wild and Scenic River System, National Trails System, and also National Monuments, Recreation, and Scenic Areas within the National Forest System, and similar areas designated by Federal statute.

Landowner(s) means the owner(s) of non-Federal land or interests in land within the boundaries of the National Forest System.

§ 251.112 Application requirements.

(a) A landowner shall apply for access across National Forest System lands in accordance with the application requirements of § 251.54 of this part. Such application shall specifically include a statement of the intended mode of access to, and uses of, the non-Federal land for which the special-use authorization is requested.

(b) The application shall disclose the historic access to the landowner's property and any rights of access which may exist over non-federally owned land and shall provide reasons why these means of access do not provide adequate access to the landowners property.

(c) The information required to apply for access across National Forest lands under this subpart is approved for use under Subpart B of this part and assigned OMB Control No. 0596–0082.

§ 251.113 Instrument of authorization.

To grant authority to construct and/or use facilities and structures on National Forest System lands for access to non-Federal lands, the authorized officer shall issue a special-use authorization in conformance with the provisions of subpart B of this part or a road-use permit. In cases where Road Rights-of-way Construction And Use Agreements are in effect, the authorized officer may grant an easement in accordance with the provisions of part 212 of this chapter.

§ 251.114 Criteria, terms and conditions.

(a) In issuing a special-use authorization for access to non-Federal lands, the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize the impacts on the Federal resources. The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.

(b) Landowners must pay an appropriate fee for the authorized use of National Forest System lands in accordance with § 251.57 of this part.

(c) A landowner may be required to provide a reciprocal grant of access to the United States across the landowner's property where such reciprocal right is deemed by the authorized officer to be necessary for the management of adjacent Federal land. In such case, the landowner shall receive the fair market value of the rights-of-way granted to the United States. If the value of the rights-of-way obtained by the Government exceeds the value of the rights-of-way granted, the difference in value will be paid to the landowner. If the value of the rights-of-way across Government land exceeds the value of the rights-of-way across the private land, an appropriate adjustment will be made in the fee charged for the special-use authorization as provided in § 251.57(b)(5) of this part.

(d) For access across National Forest System lands that will have significant non-Forest user traffic, a landowner may be required to construct new roads or reconstruct existing roads to bring the roads to a safe and adequate standard. A landowner also may be required to provide for the operation and maintenance of the road. This may be done by arranging for such road to be made part of the local public road system, or formation of a local improvement district to assume the responsibilities for the operation and maintenance of the road as either a private road or as a public road, as determined to be appropriate by the authorizing officer.

(e) When access is tributary to or dependent on forest development roads, and traffic over these roads arising from the use of landowner's lands exceeds their safe capacity or will cause damage to the roadway, the landowner(s) may be required to obtain a road-use permit and to perform such reconstruction as necessary to bring the road to a safe and adequate standard to accommodate such traffic in addition to the Government's traffic. In such case, the landowner(s) also shall enter into a cooperative maintenance arrangement with the Forest Service to ensure that the landowner's commensurate maintenance responsibilities are met or shall make arrangements to have the jurisdiction and maintenance responsibility for the road assumed by the appropriate public road authority.

(f) In addition to ensuring that applicable terms and conditions of paragraphs (a) through (e) of this section are met, the authorizing officer, prior to issuing any access authorization, must also ensure that:

(1) The landowner has demonstrated a lack of any existing rights or routes of access available by deed or under State or common law;

(2) The route is so located and constructed as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal land;

(3) The location and method of access is as consistent as reasonably possible with the management of any congressionally designated area and is consistent with Forest Land and Resource Management Plans or the plans are amended to accommodate the access grant, and;

(4) When access routes exist across the adjacent non-Federal lands or the best route as determined by the authorizing officer is across non-Federal lands, the applicant landowner has demonstrated that all legal recourse to obtain reasonable access across adjacent non-Federal lands has been exhausted or has little chance of success.

(g) In addition to the other requirements of this section, the following factors shall be considered in authorizing access to non-federally owned lands over National Forest System lands which are components of the National Wilderness Preservation System:

(1) The use of means of ingress and egress which have been or are being customarily used with respect to similarly situated non-Federal land used for similar purposes;

(2) The combination of routes and modes of travel, including nonmotorized modes, which will cause the least lasting impact on the wilderness but, at the same time, will permit the reasonable use of the non-federally owned land;

(3) The examination of a voluntary acquisition of land or interests in land by exchange, purchase, or donation to modify or eliminate the need to use wilderness areas for access purposes.

PART 293—WILDERNESS—PRIMITIVE AREAS

3. The authority citation for part 293 is revised to read as follows:

Authority: 16 U.S.C. 551, 1131–1136 and 92 Stat. 1649.

4. Revise 293.12 to read as follows:

§ 293.12 Access to surrounded State and private lands.

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given access as provided in subpart D of part 251 of this chapter.

Dated: June 6, 1991.

Richard T. Crowder,

Acting Secretary.

[FR Doc. 91-13969 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

RIN: 0970-AA47

Aid to Families With Dependent Children; Adult Assistance Programs; Exclusion of Indian Trust Funds and Alaska Native Claims Settlement Act Distributions

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rules.

SUMMARY: These final rules update the statutory exclusions contained in regulations for the Aid to Families with Dependent Children (AFDC) program and the adult assistance programs in Guam, Puerto Rico and the Virgin Islands, by adding the income and resources exclusions provided under section 4 of Public Law 97-458, section 2 of Public Law 98-64 and section 15 of Public Law 100-241. Section 4 of Public Law 97-458, enacted January 12, 1983, provides that Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress are excluded from income and resources. Section 2 of Public Law 98-64, enacted August 2, 1983, provides that all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to members of that tribe are excluded from income and resources. Section 15 of Public Law 100-241, enacted February 3, 1988, provides that the following distributions from a Native Corporation formed pursuant to the Alaska Native Claims Settlement Act will be excluded from income and resources: (1) Cash to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; (2) stock; (3) a partnership interest; (4) land or an interest in land; and (5) an interest in a settlement trust.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401-9275.

SUPPLEMENTARY INFORMATION:

Discussion of Regulatory Provisions and Responses to Comments

On May 4, 1989, we published proposed rules in the **Federal Register** relating to the Exclusion of Indian Trust Funds and Alaska Native Claims Settlement Act Distributions (54 FR 19197). We received comments from eight interested parties regarding the proposed rules. The respondents include the Senate Select Committee on Indian Affairs, a State Governor, two State IV-A agencies and four Alaska Native Corporations. Following is a discussion of the regulatory provisions, the comments and our responses, and the rationale for any changes from the proposed rules. This discussion is divided into two parts. The first part addresses the implementation of Public Law 97-458 on the exclusion of Indian judgment funds and Public Law 98-64 on the exclusion of other trust funds. The second part addresses the implementation of Public Law 100-241 on the exclusion of Alaska Native Claims Settlement Act distributions.

Implementation of Public Law 97-458 and Public Law 98-64 (§§ 233.20(a)(4)(ii)(n) and (o) of the Final Regulations)

Section 4 of Public Law 97-458 amended section 7 of Public Law 93-134 and provides that certain Indian judgment funds that are held in trust by the Secretary of the Interior or are distributed on a per capita basis pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and purchases made with such funds, are excluded from income and resources under Social Security Act programs. Indian judgment funds include interest and investment income accrued while the funds are held in trust.

Section 2 of Public Law 98-64 removes the requirement that trust funds must derive from judgments granted to Indian tribes as a result of successful claims against the United States in order to be subject to the exclusion provisions in section 7 of Public Law 93-134, as amended by section 4 of Public Law 97-458. Section 2 of Public Law 98-64 provides for the exclusion of funds which are held in trust by the Secretary of the Interior for an Indian tribe and distributed on a per capita basis to members of that tribe, and purchases made with such funds. Trust funds include interest and investment income accrued while the funds are held in trust.

Under these rules, the exclusions are extended only to initial purchases made with judgment funds under Public Law 97-458 and other trust funds under Public Law 98-64. These exclusions do not apply to subsequent purchases made with funds derived for the sale or conversion of the initial purchases. For example, if an AFDC family receives a cash distribution from the Secretary of Interior under Public Law 97-458, and uses it to buy $1,000 worth of commodities, both the cash distribution itself (while the family holds it) and the commodities purchased with the distribution would be excluded from income and resources for AFDC purposes. However, should the family sell the commodities at some future time, then the proceeds so received and their subsequent use result from a voluntary commercial transaction (i.e., a sale of goods) rather than from a distribution by the Secretary of the Interior of funds held in trust. It is only these latter distributions that the Congress sought to protect under Public Law 97-458. A similar analysis applies to trust fund distributions made under Public Law 98-64. Section 233.20 is amended by revising paragraph (a)(4)(ii)(*e*) and by adding two new paragraphs (a)(4)(ii) (*n*) and (*o*) to incorporate the provisions of section 4 of Public Law 97-458 and section 2 of Public Law 98-64.

Discussion of Comments

Comment: Two commenters requested that we amend the regulations to include language regarding the treatment of excluded funds which are commingled with non-excluded funds.

Response: We do not plan to regulate in this area. In our view, that is a matter best left to State discretion. Section 233.20(a)(4)(ii) of the existing regulations provides that funds from specific sources will be disregarded as income and resources, as required by various statutes. The regulations leave to State discretion what rules should apply in identifying disregarded resources after they are received. However, regardless of what a State chooses to do, it must disregard (and only disregard) trust fund distributions that are required by law to be excluded.

Comment: Three commenters expressed concern about accounting problems that may occur if disregarded

trust funds are commingled with other funds to purchase assets. The commenters asked whether there is any Federal law that prohibits a member of an Indian tribe from using distributed trust funds together with other funds to purchase a tangible asset. If not, how much of the asset's equity value is disregarded?

Response: Federal law does not address the use of distributed trust funds and other funds to purchase assets and we do not plan to regulate in this area. Therefore, the determination of how much of such an asset's equity value is disregarded is left to the States.

Comment: One commenter asked whether the exclusions in Public Law 97–458 and Public Law 98–64 continue to apply if trust funds or initial purchases made with trust funds are inherited, transferred or sold.

Response: These exclusions may not be applied after trust funds or initial purchases made with distributed trust funds are inherited or transferred. Section 4 of Public Law 97–458 limits the exclusions to "such household or member"—i.e., the entity to which the distribution was made. The same limitation governs distributions under section 2 of Public Law 98–64. When Congress has wanted to extend an exclusion further, it has specifically done so. For example, in section 15 of Public Law 100–241, Congress excluded distributions from being taken into account for "a household, an individual Native, or a descendent".

We have amended § 233.20(a)(4)(ii) (*n*) and (*o*) of the final rules to include the categories of persons who are eligible for the trust funds exclusions. (We have also amended §233.20(a)(4)(ii)(*k*) of the final rules to include the categories of persons who are eligible for the Alaska Native Claims Settlement Act exclusions.)

In addition, the exclusions do not apply if initial purchases are sold. As stated in the preamble to the proposed rules (54 FR 19197), the proceeds of the sale of initial purchases would be counted. The basis is that the sale of initial purchases results from a voluntary transaction, i.e., a sale of goods, rather than from the distribution of trust funds by the Secretary of the Interior. No comments on this interpretation were recevied.

Comment: One commenter pointed out that the preamble to the proposed regulations specifies that interest and investment income accrued while funds are held in trust is exempt. For accuracy, the regulations should include this exclusion.

Response: We agree, and § 233.20(a)(4)(ii) (*n*) and (*o*) of the final regulations have been amended accordingly.

Implementation of Public Law 100–241 § 233.20(a)(4)(ii)(k) of the Final Regulations

Section 15 of Public Law 100–241 amended the Alaska Native Claims Settlement Act (ANCSA) by adding a new section 29(c) which provides that the following types of distributions received from a Native Corporation shall be excluded from income and resources: (1) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; (2) stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); (3) a partnership interest; (4) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and (5) an interest in a settlement trust.

Under these final rules, the new income and resources exclusions mandated by section 29(c) replace the current exclusion of tax-exempt ANCSA payments in § 233.20(a)(4)(ii)(*k*). With respect to the exclusion of cash payments, the phrase "per annum" is interpreted to mean each year. Therefore, up to $2,000 of cash ANCSA distributions that an individual receives each year will be excluded from being considered to be either the income or resources of that individual.

Discussion of Comments

Comment: One commenter suggested that we amend the regulations to interpret the phrase "per annum" to mean any continuous twelve-month period, instead of each calendar year. The commenter believes it is inequitable to count $1,000 of a $2,000 cash payment received in December because of $1,000 payment received in November was excluded, when we would exclude both payments if they were received in December of one year and January of the following year.

Response: We have reconsidered the interpretation set forth in the proposed rules, and have decided not to include a specific yearly period in the final rules for excluding cash ANCSA distributions. Therefore, each State will have the flexibility to establish a fixed 12-month period for all individuals, or a varied 12-month period determined individually for each recipient.

Comment: Seven commenters objected to the proposed interpretation that would exclude from resources only a total of $2,000 in cash ANCSA distributions regardless of the year in which an individual received the payments. The commenters believe the statute indicates that cash distributions up to $2,000 are to be excluded each year, are to be excluded indefinitely, and do not affect the exclusion of cash distributions made in subsequent years.

Response: We have reconsidered the proposed rules and have decided to provide the suggested exclusion in the final rules. Thus, § 233.20(a)(ii)(*k*)(*1*) of the final rules provides that cash distributions (including cash dividends on stock from a Native Corporation) that are received by an individual are never considered as income or resources to the extent that such cash does not, in the aggregate, exceed $2,000 in a year. Cash which, in the aggregate, is in excess of $2,000 in a year is not subject to the income and resources disregards in paragraph (a)(4)(ii)(*k*)(*1*). In re-examining our proposed policy, we were particularly impressed by congressional action in recent years to enact legislation to exclude various types of payments from income and resources in needs-based programs without any limit on the amount that can be accumulated.

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the three criteria which require a regulatory impact analysis under Executive Order 12291. Specifically, the regulations will not have an annual effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant 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.

Nationally, we have determined that the Federal share of the cost of additional assistance payments under the AFDC and adult assistance programs resulting from the trust funds exclusions required by Public Law 97–458 and Public Law 98–64 would be $696,960 per year. The Federal share of the cost of additional payments resulting from the Alaska Native Claims Settlement Act exclusions required by Public Law 100–241 would be $1,878,108 per year. Therefore, the estimated annual Federal expenditures attributable to these payments would be $2,575,068. These costs are the direct result of the legislation and not the discretionary latitude of the Secretary.

The regulations will also have a cost impact on Medicaid and other Federal programs which consider the receipt or amount of AFDC/adult assistance as an eligibility factor.

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities because they primarily affect State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, The Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These rules do not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payment-Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: July 31, 1990.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: February 8, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 is revised to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and sec. 6 of Pub. L. 94–114, 89 Stat. 579; Part XXIII of Pub. L. 97–35, 95 Stat. 843; Pub. L. 97–248, 96 Stat. 324; Pub. L. 99–603, 100 Stat. 3359; and sec. 221 of Pub. L. 98–181, as amended by sec. 102 of Pub. L. 98–479 (42 U.S.C. 602 note); sec. 4 of Pub. L. 97–458, 96 Stat. 2513; sec. 2 of Pub. L. 98–64, 97 Stat. 365; and sec. 15 of Pub. L. 100–241, 101 Stat. 1812; and sec. 202 of Pub. L. 100–485, 102 Stat. 2377.

2. Section 233.20 is amended by revising paragraphs (a)(4)(ii)(*e*) and (a)(4)(ii)(*k*), and by adding two new paragraphs (a)(4)(ii)(*n*) and (a)(4)(ii)(*o*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.*

* * *

(4) *Disregard of income in OAA, AFDC, AB, APTD, or AABD.* * * *

(ii) * * *

(*e*) Any funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92–254 or Pub. L. 94–540;

* * * * *

(*k*) Pursuant to section 15 of Public Law 100–241, any of the following distributions made to a household, an individual Native, or a descendant of a Native by a Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (Pub. L. 92–203, as amended):

(*1*) Cash distributions (including cash dividends on stock from a Native Corporation) received by an individual are never counted as income or resources to the extent that such cash does not, in the aggregate, exceed $2,000 in a year. Cash which, in the aggregate, is in excess of $2,000 in a year is not subject to the income and resources disregards in this paragraph (a)(4)(ii)(*k*)(*1*);

(*2*) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(*3*) A partnership interest;

(*4*) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(*5*) An interest in a settlement trust.

* * * * *

(*n*) Pursuant to section 7 of Public Law 93–134, as amended by section 4 of Public Law 97–458, Indian judgment funds that are held in trust by the Secretary of the Interior (including interest and investment income accrued while such funds are so held in trust), or distributed per capita to a household or member of an Indian tribe pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or conversion of the initial purchases, or to funds or initial purchases which are inherited or transferred.

(*o*) Pursuant to section 2 of Public Law 98–64, all funds held in trust by the Secretary of the Interior for an Indian tribe (including interest and investment income accrued while such funds are so held in trust) and distributed per capita to a household or member of an Indian tribe, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or conversion of initial purchases, or to funds or initial purchases which are inherited or transferred.

* * * * *

[FR Doc. 91–14187 Filed 6–13–91; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket 80–286; FCC 91–141]

Common Carrier Services; Allocation of Costs Between the State and Interstate Jurisdictions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amended § 36.621 of its rules to adopt the changes recommended last December by the 80–286 Federal-State Joint Board. This section specifies the procedures used by the National Exchange Carrier Association to calculate study area unseparated loop costs for the purpose of determining the level of the Universal Service Fund. The rule amendment substitutes gross investment for net investment as the basis for allocating Operating Taxes and Corporate Operations Expenses between the loop and nonloop operations of local exchange carriers.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Needy, Accounting and Audits Division, Common Carrier Bureau, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket No. 80–286, FCC 91–141, adopted April 25, 1991, and released May 28, 1991.

The full text of all Commission orders are 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 order may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1114 21st Sreet NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

Section 36.621 of the Commission's rules prescribes the procedures that the National Exchange Carrier Association (NECA) uses to calculate unseparated loop costs, in individual study areas of local exchange carriers, for the purpose of determining the level of the Universal Service Fund. To ensure that loop-

related overhead costs and taxes are properly included in this calculation, the rules require NECA to include a portion of unseparated Corporate Operations Expenses and Operating Taxes. The rules specify that NECA is to allocate these overhead costs and taxes between loop and nonloop operations based on the loop/nonloop apportionment of net investment.

Since March 4, 1988, however, NECA had based this allocation, pursuant to a waiver of the rules, on gross investment rather than net investment. To determine whether this change should be made permanent, the Commission released a Notice of Proposed Rulemaking on November 22, 1988, proposing to amend these rules 53 FR 49575, December 8, 1988, inviting comment and referring the matter to the Docket 80–286 Joint Board for a recommendations. Specifically, the Commission proposed a bifurcated approach under which the allocation of Corporate Operations Expenses would be based on gross investment but that of Operating Taxes would be based on net investment.

On November 15, 1990, the Joint Board adopted recommendations regarding these allocation procedures. It recommended that the Commission amend the rules to prescribe the use of gross investment as the basis of allocation for both Corporate Operations Expenses and Operating Taxes, as NECA had been doing under waiver. The Joint Board noted that all but one commenting party favored this approach. The Joint Board determined that the allocation of Corporate Operations Expenses better reflects cost causation when based on gross investment rather than net investment. It also determined that the substitution of net investment for gross investment as the basis of allocation for taxes would have only a minimal effect on the overall amount of USF support. It therefore concluded that any marginal improvement in precision that might result from using the bifurcated approach proposed by the Commission would be too small to warrant the added complexity of such an approach. In addition, it recommended several minor language changes to clarify these rules. On April 25, 1991, this Commission concurred with the Joint Board's conclusions and adopted its recommended rule amendments.

Ordering Clauses

9. Accordingly, *it is ordered*, That the recommendations of the Federal-State Joint Board, *are adopted*.

10. *It is further ordered*, That the amendments to part 36 of the Commission's rules set forth below are adopted July 15, 1991. These actions are taken pursuant to sections 1, 4 (i) and (j), 205, 221(c), 403, and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 403 and 410.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Telephone, Uniform system of accounts.

Rule Changes

Part 36 of title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 36 continues to read:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 403 and 410.

2. The heading of subpart F is revised to read as follows:

Subpart F—Universal Service Fund

3. Section 36.601 is amended by revising paragraph (a) to read as follows:

§ 36.601 General.

(a) The Universal Service Fund is derived from an expense adjustment that shall be computed in accordance with this subpart F. This adjustment shall be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to subpart D of this part.

* * * * *

4. Section 36.621 is amended by revising the section heading and paragraphs (a) and (a)(4) to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) For the purpose of calculating the expense adjustment, the study area total unseparated loop cost equals the sum of the following:

* * * * *

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(a)(5) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 36.611(a)(1), to the unseparated gross telecommunications plant investment, as reported in § 36.611(a)(6).

5. The section heading of § 36.622 is revised to read as follows:

§ 36.622 National and study area average unseparated loop costs.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–14177 Filed 6–13–91; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 91–5; RM–7587]

Radio Broadcasting Services; Richwood, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robco Communications, allots Channel 265A to Richwood, Louisiana. See 56 FR 04783, February 6, 1991. Channel 265A can be allotted to Richwood, Louisiana, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 265A are North Latitude 32–26–24 and West Longitude 92–04–40. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991. The window period for filing applications will open on July 26, 1991, and close on August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–5, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 265A, Richwood.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-14234 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 91-6; RM-7590]

Radio Broadcasting Services; Oxford, MS

AGENCY: Federal Communications Commission .

ACTION: Final rule.

SUMMARY: This document substitutes Channel 229A for Channel 296A at Oxford, Mississippi, and modifies the license for Station WKLJ-FM to specify operation on the new Class A channel. See 56 FR 4783, February 6, 1991. The coordinates for Channel 229A are 34-21-32 and 89-38-04. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-6, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 296A and adding Channel 229A at Oxford.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-14235 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-551; RM-7385]

Radio Broadcasting Services; South Bend, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Blue Denim Music, Inc., allots Channel 289C3 to South Bend, Washington, as the community's first local FM transmission service. See 55 FR 48871, November 23, 1990. Channel 289C3 can be allotted to South Bend in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 289C3 at South Bend are North Latitude 46-39-48 and West Longitude 123-48-12. Canadian concurrence has been obtained since South Bend is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991. The window period for filing applications will open on July 26, 1991, and close on August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-551, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 289C3, South Bend.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-14236 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-612; RM-7550, RM-7685]

Radio Broadcasting Services; Fox Farm, Wyoming and Gering, NB

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gering Community Broadcasters, allots Channel 280C to Gering, Nebraska, as the community's first local FM transmission service. The proposal of Farm Broadcasting for the allotment of Channel 280C1 at Fox Farm, Wyoming, as the community's first local FM service is denied. See 55 FR 52185, December 20, 1990. Channel 280C can be allotted to Gering without the imposition of a site restriction. The coordinates for Channel 280C at Gering are North Latitude 41-49-42 and West Longitude 103-39-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1991. The window period for filing applications will open on July 26, 1991, and close on August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-612, adopted May 28, 1991, and released June 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downturn Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73–202(b), the Table of FM Allotments under Nebraska, is amended by adding Channel 280C, Gering.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–14237 Filed 6–13–91; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 88–375, FCC 91–128]

FM Broadcast Services; Class C3 and Class A FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this decision, the Commission responds to petitions for reconsideration and clarification of the Second Report and Order (Second Report) in this proceeding (54 FR 35335, August 25, 1989). Specifically, the Commission: (1) Clarifies that 47 CFR 73.213 and 73.215 represent two separate approaches to obtaining a power increase, and declines to address the manner of securing consent, provided for in § 73.213 of the Commission's rules; (2) revises 47 CFR 73.213 to require a showing of non-availability of non-short-spaced locations only for those existing grandfathered short-spaced Class A stations seeking relocation to another short-spaced location; and (3) corrects several problems with respect to the Class A power increase rules. The actions are taken to provide additional opportunities for improving the facilities of existing Class A FM broadcast stations.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, Policy and Rules Division, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order (MO&O) in MM Docket No. 88–375, adopted April 15, 1991, and released May 30, 1991.

The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C., and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1919 M Street, NW., Room 246, Washington, D.C. 20554.

Synopsis of Memorandum Opinion and Order

1. This action responds to petitions for reconsideration, partial reconsideration, and/or clarification of the rule amendments contained in the Second Report, filed by the National Association of Broadcasters (NAB), United Class A Broadcasters Coalition (Coalition), and the engineering firm of du Treil, Lundin & Rackley, Inc. (DLR). In general, the Coalition and DLR suggest that some of the new rules unnecessarily handicap licensees of Class A stations from obtaining improved coverage and should be amended. On the other hand, NAB maintains that the new rules are necessary to prevent degradation of the FM service.

2. This MO&O thus make several adjustments and clarifications to the rules adopted in the Second Report. First, it affirms that §§ 73.213 and 73.215 represent two separate approaches to obtaining a power increase. Applications filed pursuant to § 73.215 do not require the consent of other licensees because full protection will be afforded to all stations' service contours. Thus, the Coalition misinterprets the consent requirement if it believes that the requirement applies to short-spaced Class A stations for which a power increase is sought pursuant to § 73.215. The responsibility for ensuring that proper protection is afforded by applicants filing pursuant to § 73.215 rests with the Commission, not any other party.

3. Section 73.213(c)(2), on the other hand, states that "Each application to operate a Class A station with an ERP and HAAT such that the reference distance would exceed 24 kilometers must contain an exhibit *demonstrating the consent* (emphasis the Commission's) of the licensee of each co-channel, first, second or third adjacent channel station (for which the requirements of § 73.207 are not met) to a grant of that application." The rule does not address the manner of securing consent because that process is merely incidental. Consent cannot be procured without adequate notification. As a practical matter, the Agency's experience indicates that the "exhibit demonstrating consent" is provided by all § 73.213(c)(2) applicants and consists either of a letter indicating specific consent, or an agreement between two licensees seeking a mutual power increase. The Commission emphasizes that "consent" is not and may not be the equivalent of "negotiated acceptance of interference." Rather, it is an acknowledgement of the proposed modification and an indication that it is not objectionable. Consent also serves the practical purpose of greatly reducing the technical showings and arguments that would otherwise be requried. Also, the Agency emphasizes that a non-response on the part of a short-spaced licensee to a request for consent to a grant of a § 73.213(c)(2) application will not be interpreted as consent.

4. Next, § 73.213(c)(2) of the Rules states that "applications that specify a transmitter site which is short-spaced to an FM station other than another Class A station which is seeking a mutual increase in facilities may be granted only if no alternative fully-spaced site or less short-spaced site is available. Licensees of Class A stations seeking mutual increases in facilities need not show that a fully-spaced or less short-spaced site is available." The Coalition contends there is no basis for requiring Class A stations short-spaced to stations of other classes and seeking to increase power at existing sites to first show that no fully spaced or less short-spaced sites is available. Such showings, suggest the Coalition, should only be required when an applicant seeks a waiver to install a full-facility transmitter at a new short-spaced site. The Commission agrees with the Coalition's contention, and finds that, because power increases sought pursuant to § 73.213(c)(2) require the consent of all potentially affected licensees, the current requirement for a showing of non-alternative site availability appears unduly restrictive in the case of stations for which relocation is not practicable. Such a showing should, however, be required in the case of a § 73.213(c)(2) application involving both an increase in facilities and station relocation. The rules are amended to reflect this modified requirement.

5. Finally, the Commission has identified several problems with respect to the Class A power increase rules. First, the question has arisen as to how § 73.213(c)(2) should be applied in the case where two Class A licensees are short-spaced with respect to each other, where they agree to mutual power increases, but where one licensee is not prepared to effectuate the increase in consonance with the other licensee. The rule is silent with respect to a staggered or deferred power increase. The Commission now recognizes that financial limitations or other factors

may preclude a simultaneous increase in the power of two short-spaced Class A stations, at least during a particular period of time. This can result in a significant problem. The Commission believes that there is an equitable solution to this dilemma, and accordingly adopts the following policy in such cases. Because most short-spacing cases do not involve minimal short-spacing (i.e., minimal spacing based on the former mutual maximum facilities of 3 kW @ 100 meters HAAT) some unilateral increase in power will generally be possible which will not lead to future conflicts or loss of service.

6. The new policy can be explained most clearly with an example. Let us presume that the short-spacing between two Class A stations is such that a mutual power increase to 4.0 kW and a HAAT of 100 meters would be possible with no contour overlap or disruption of existing service. The Commission will permit such a unilateral increase in power with the consent of the non-upgrading, short-spaced Class A licensee. This will permit a prompt enhancement of service of the station initially upgraded. Sometime later, circumstances may permit the upgrade of the other station, which can then be upgraded to a power of 4.0 kW and a HAAT of 100 meters. At such a point in time, the two short-spaced licensees could effect a new agreement to mutually upgrade to 6 kW, if both are able to do so. (This example is not intended to preclude the possibility of an initial upgrade agreement outlining the scenario described. In other words, both licensees could initially agree on an ultimate upgrade to 6 kW, with a unilateral upgrade to 4.0 kW in the short term.) In this way, the upgrade potential of both stations would be preserved and no interference would be caused to established service. The Agency emphasizes that while it will not deny a unilateral power increase to 6 kW on the part of a Class A station short-spaced to another Class A station, where the consent of the non-upgrading licensee is given, the consenting licensee should be fully aware of the consequences of such consent. This being the case, the Commission believes that most unilateral power increases on the part of one Class A station short-spaced to another will follow the procedure we have just described.

7. Next, there are stations that were first authorized after November 16, 1964, to use a transmitter site that does not meet the spacing distances formerly required for 3 kW Class A stations. Up until now, these stations have been permitted to increase power up to 3 kW at a HAAT of 100 meters, or equivalent power for a greater HAAT, at their present site. In addition to, or in conjunction with, the first option, they may change to a new site which maintains or increases the distance between the stations. They also may apply for a modification pursuant to the contour protection provisions of § 73.215. Finally, they may change site to increase the distance between the stations so that they meet the former 3 kW spacing requirements, or the existing 6 kW spacing requirements, in which case the options for those situations would be available.

8. The Commission wishes to clarify the status of Class A stations short-spaced after November 16, 1964. Section 73.213(c) implies that only those authorized Class A stations which became short-spaced as a result of the increased separation distances adopted in this rule making may be modified or relocated in accordance with that rule section. However, because all such facility increases are contingent upon the consent of affected cochannel and adjacent channel licensees, and because the Commission has allowed the grandfathered short-spaced stations authorized prior to November 16, 1964, the opportunity to increase power to 6 kW, it is eminently fair and equitable to allow up to 6 kW ERP for the remaining Class A stations that were short-spaced prior to the adoption of the *Second Report*. Therefore, the Agency is amending § 73.213(c) accordingly.

9. The question has also been posed as to whether Class A station licensees wishing to increase power in accordance with § 73.213 or § 73.215 should be able to maintain their existing coverage in short-spaced directions. DLR believes that a licensee seeking a power increase for a station that has existing overlap with another FM station, will have to reduce existing coverage in those directions where the prohibited overlap occurs. DLR suggests that such licensees would be penalized if they were required to reduce facilities to less than the equivalent of 3 kW and 100 meters in any direction as part of an overall power increase. The provisions in § 73.213 are intended to maximally protect the service of other short-spaced stations. Nevertheless, the Agency sees no reason why licensees seeking to enhance their service should forfeit service already established in directions where some overlap exists. Therefore, the Commission will permit facility enhancements sought pursuant to § 73.213 that retain current coverage in directions where overlap exists, provided no new predicted interference is created to the current service of any other short-spaced co-channel and adjacent channel licensees.

10. Another clarification involves § 73.207(b)(3), which states that under the Mexico-United States FM Broadcasting Agreement, Class A stations operating with more than 3 kW ERP and 100 meters HAAT are treated as Class B stations. The correct antenna height in accordance with that Agreement should be 91 meters HAAT. Section 73.207 is editorially amended to reflect the correct figure.

11. Lastly, § 73.207(b)(2), regarding the spacings to be used for U.S. stations relative to Canadian allotments and assignments, states in part that "* * * U.S. Class A assignments operating with more than 3 kW ERP and 100 meters antenna HAAT are considered to be Class B1." Similar language is found in § 73.207(b)(3) regarding spacings to Mexican allotments and assignments. The Commission notes that some applicants requesting facilities in excess of 3 kW ERP at 100 meters HAAT for new Class A stations located within 320 kilometers of the Canadian or Mexican borders have had their applications returned as unacceptable for filing. The Commission takes this opportunity to explain certain rules and the differences between applications for new facilities and those seeking to improve existing authorized facilities.

12. As explained in § 73.1650, FM authorizations are subject to compliance with Bi-lateral Agreements that the U.S. has with Canada and Mexico. These agreements define, among other things, classes of stations by power and height limitations and specify minimum distance separation requirements. For convenient reference, those separation requirements have been incorporated in § 73.307 as Tables B and C. Because some domestic classes are not defined in these agreements or may have different limitations, §§ 73.207(b) (2) and (3) explain what substitutions must be made *in order to apply the tables correctly.*

13. The two Bi-lateral Agreements each contain a table of allotments which associates classes of stations, as defined in the agreement, with specific channels and communities. As a consequence, allotments within 320 kilometers of the Canadian and Mexican borders are listed twice—once in our domestic table (§ 73.202) and once in the appropriate agreement.

14. A difficulty arises when a particular allotment is shown as Class A both in the domestic table and in either agreement. Domestically, the Class A limits are 6 kW at 100 m, but in the

Canadian and Mexican agreements they are 3 kW at 100 m and 3 kW at 91 m respectively. Before the Commission authorizes Class A facilities in a border zone which specifies values that exceed the 3 kW at 100 m or 3 kW at 91 m limitation, the Agency must first obtain the concurrence of Canada or Mexico to modify the appropriate bi-lateral table (but not the domestic table), so as to change the allotment to Class B1 (Canada) or Class B (Mexico). Of course, the allotment must meet the B1 or B distance separations with respect to foreign allotments and assignments.

15. In the case of a vacant Class A allotment in a border zone, an interested party may request the FCC to obtain Canadian or Mexican concurrence to upgrade the allotment to B1 or B in the appropriate bi-lateral table. It will remain a Class A allotment in the domestic table and no applications exceeding 3 kW at 100 m (or 3 kW at 91 m) will be accepted for that allotment until international coordination is completed. In the case of an existing Class A authorization in a border zone, the licensee may simultaneously file an application which specifies facilities in excess of 3 kW at 100 m (or 3 kW at 91 m), and a request for the Commission to obtain international consent to a modification of the bi-lateral table. The application will not be processed until the international coordination is resolved.

16. Applications for a vacant Class A allotment which specifies facilities in excess of 3 kW at 100 m within the Canadian border zone or 3 kW at 91 m within the Mexican border zone are not acceptable for filing unless the table of allotments in the applicable agreement has already been changed to a higher class. Further, applications for vacant allotments which do not conform to a bi-lateral table but which are accompanied by requests for negotiations to amend the bi-lateral table also are not acceptable for filing.

17. In the interest of fairness to competing applicants and other affected parties, and in order to expedite service to the public, the Commission's "hard look" processing standards adopted in the Report and Order in MM Docket No. 84–750, 50 FR 19936 (May 13, 1985), specify that applications must be acceptable for filing at the close of the amendment as of right period. A request that the Commission seek international clearance for an application not filed in accordance with the applicable agreement is, in essence, a request for waiver of the Agency's "hard look" processing requirements. In the case of multiple applicants for an allotment, such waiver would be unfair to the other applicants who fully complied with the acceptability criteria. Additionally, even for single applicants for new stations, there is no guarantee that negotiations would be successful and, even if successful, the undue delay involved in obtaining clearance and, thus, implementing new service to the community could be substantial. Requests for negotiations on behalf of existing stations, however, do not trigger similar detrimental public interest consequences and will therefore be held on file pending the outcome of such negotiations. The Commission notes that once an applicant for a new station receives a construction permit, an application for a power increase accompanied by a request for negotiations may be filed.

Final Regulatory Flexibility Analysis Statement

18. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a positive impact on a substantial number of small entities because it will somewhat reduce the showing required by applicants for short-spaced Class A FM stations.

19. Accordingly, it is ordered that the petitions for Reconsideration and/or Clarification are granted as specified above and are denied in all other respects. It is further ordered that, pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, and effective July 15, 1991, part 73 of the Commission's rules is amended as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Amendatory Text

47 CFR part 73 is amended as follows:

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

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

21. 47 CFR 73.207 is amended by revising the introductory text of paragraph (b)(3) to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(3) Under the Mexico-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Mexican allotments and assignments by not less than the distances given in Table C, which follows. When applying Table C, U.S. Class C2, C3 and B1 allotments and assignments are considered to be Class B; U.S. Class C1 allotments and assignments are considered to be Class C; also, U.S. Class A assignments operating with more than 3 kW ERP and 91 meters antenna height above average terrain (or equivalent lower ERP and higher antenna HAAT based on Annex IV of the Agreement) are considered to be Class B.

* * * * *

22. 47 CFR 73.213 is amended by revising paragraphs (c), introductory text, and (c)(2) to read as follows:

§ 73.213 Grandfathered short-spaced stations.

* * * * *

(c) Short spacings involving at least one Class A allotment or authorization. Stations that became short spaced on or after November 16, 1964 (including stations that do not meet the minimum distance separation requirements of paragraph (c)(1) of this section and that propose to maintain or increase their existing distance separations) may be modified or relocated in accordance with paragraph (c)(1) or (c)(2) of this section, except that this provision does not apply to stations that became short spaced by grant of applications filed after October 1, 1989, or filed pursuant to § 73.215. If the reference coordinates of an allotment are short spaced to an authorized facility or another allotment (as a result of the revision of § 73.207 in the Second Report and Order in MM Docket No. 88–375), an application for the allotment may be authorized, and subsequently modified after grant, in accordance with paragraph (c)(1) or (c)(2) of this section only with respect to such short spacing. No other stations will be authorized pursuant to these paragraphs.

* * * * *

(2) Applications for authorization of Class A facilities greater than 3,000 watts ERP and 100 meters HAAT. Each application to operate a Class A station with an ERP and HAAT such that the reference distance would exceed 24 kilometers must contain an exhibit demonstrating the consent of the licensee of each co-channel, first, second or third adjacent channel station (for which the requirements of § 73.207 are not met) to a grant of that application. Each such application must specify a transmitter site that meets the applicable IF-related channel distance separation requirements of § 73.207. Applications that specify a new transmitter site which is short-spaced to

an FM station other than another Class A station which is seeking a mutual increase in facilities may be granted only if no alternative fully-spaced site or less short-spaced site is available. Licensees of Class A stations seeking mutual increases in facilities need not show that a fully spaced site or less short-spaced site is available. Applications submitted pursuant to the provisions of this paragraph may be granted only if such action is consistent with the public interest.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14233 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06, Notice 11]

RIN: 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses, and Multipurpose Passenger Vehicles

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

ACTION: Final rule.

SUMMARY: This notice extends the quasi-static test requirements of Federal Motor Vehicle Safety Standard No. 214 to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less. These performance requirements, which currently apply only to passenger cars, mitigate occupant injuries in side impacts. Under this part of the standard, each side door is required to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. This rule is part of the NHTSA program to improve side impact protection for vehicle occupants.

DATES: The amendments made by this final rule to the Code of Federal Regulations are effective September 1, 1993. Petitions for reconsideration of this final rule must be filed by July 15, 1991.

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

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

NHTSA's standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214. Since the standard became effective on January 1, 1973, it has specified performance requirements for each passenger car side door. The standard, through its provisions concerning side door strength, seeks to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The side door strength provisions of the standard require each door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. The load is applied by means of a piston pressing a vertical steel cylinder against the middle of the door. The bottom of the cylinder is five inches above the lowest point of the door; the top of the cylinder extends above the bottom edge of the window opening by at least 0.5 inches. Car manufacturers have generally chosen to meet these performance requirements of the standard by reinforcing the side doors with metal beams.

NHTSA's analysis of crash data has shown that the strengthening of passenger car side doors with the beams is effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard No. 214," (DOT HS 806-314) estimated that 480 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle side impact occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car side impact collisions.

During the past several years, NHTSA has been involved in a number of efforts to upgrade Standard No. 214, both in developing new dynamic procedures and requirements for passenger cars and in extending applicability of the long-established quasi-static passenger car requirements to trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less (light trucks, vans and MPV's, or "LTV's").

For passenger cars, on October 30, 1990, NHTSA published in the **Federal Register** (55 FR 45722) a final rule adding dynamic test procedures and performance requirements to Standard No. 214. The final rule requires that a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. Instrumented test dummies are positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis.

Also, on August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the protection provided by the side of the vehicle is a relevant factor. The ANPRM also sought comments on whether additional requirements should be considered to address side impacts with poles and trees.

NHTSA's efforts to extend side impact requirements to LTV's largely parallel its efforts with respect to passenger cars. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31716) an ANPRM regarding possible requirements for LTV's in each of the areas where requirements have been established, or are under consideration, for passenger cars. The ANPRM addressed: (1) Extension to LTV's of Standard No. 214's existing static procedures and performance requirements, i.e., measuring crush strength performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door, (2) developing dynamic test procedures and performance requirements for LTV's, similar to those proposed in the January 1988 NPRM for passenger cars, and (3) developing requirements for LTV's intended to reduce the risk of head and neck injuries and ejections, similar to those addressed in the August 1988 ANPRM for passenger cars.

Of the various potential side impact requirements for LTV's that were addressed in the ANPRM, NHTSA is the most advanced with respect to the extension of Standard No. 214's existing side door strength requirements to these

vehicles. The agency decided to go forward with rulemaking on that issue separately, since waiting until the agency is ready to address all of the potential requirements together would result in unnecessary delays and loss of safety benefits. Therefore, after considering comments on the ANPRM, NHTSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** of December 22, 1989 (54 FR 52826) to extend the quasi-static test requirements for side door strength applicable for passenger cars to LTV's.

Summary of the Proposal

NHTSA proposed extending Standard No. 214's quasi-static test requirements to trucks, buses and MPV's with a GVWR of 10,000 pounds or less, effective September 1, 1992. NHTSA requested comment on whether a more limited extension would be appropriate, in light of the alleged potential impacts on final-stage manufacturers of multi-stage vehicles. In the proposal, NHTSA stated that it believed that manufacturers would comply with the requirements by adding metal beams to the side doors of these vehicles, similar to those currently added to passenger cars.

NHTSA recognized that a significant difference between passenger cars and many LTV's that LTV's is may have side doors that are not likely to have vehicle occupants sitting near them. Therefore, the agency proposed to exclude certain doors from the standard. The agency proposed to exclude: (1) Any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and (2) any side door located adjacent to hardware for installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1). (The term "outboard designated seating position" is defined in 49 CFR 571.3.)

NHTSA requested comments on a few issues relating to the proposed criteria for the exclusion of these doors. One issue was whether there should be an exclusion from the standard of rear side van doors if a small portion of the front of that side door is adjacent to the rear of the front seat. Another issue was whether rear van doors adjacent to aisleways should be excluded from coverage even though the seating position on the other side of the aisleways might not be "outboard designated positions," because those aisle seats could be less than 12 inches from the side of the vehicle. NHTSA also requested comments on whether any other doors, such as detachable doors, should be excluded from the standard's coverage.

Brief Summary of Comments

NHTSA received comments from 21 parties. The majority of commenters supported extension of the side-door strength provisions of the standard to LTV's. Among those favoring the proposed extension were all insurance groups, consumer groups, and medical groups which commented. In addition, some motor vehicle manufacturers and associations of such manufacturers supported the proposal. Several manufacturers provided no position on the overall proposal, while commenting on specific aspects of the proposal. Others stated conditional support for the proposal with comments on specific aspects of it. One manufacturer did not support the proposal, while another suggested that action be delayed until action is taken on the potential dynamic side impact requirements for LTV's. A more detailed summary of comments and the NHTSA response to those comments is presented in later portions of this notice.

Summary of the Final Rule

After considering the comments and other available information, NHTSA has decided to extend the side door strength requirements of Standard No. 214 to LTV's. The final rule extends these requirements to LTV's with a GWVR of 10,000 pounds or less, except for walk-in vans. The requirements become applicable to the covered LTV's on September 1, 1993. The final rule establishes the same test procedure for LTV's as was proposed (i.e., the side door strength procedure that has applied to passenger cars since the standard became effective). As discussed more fully later in this notice, the rule excludes certain side doors from the side strength requirements of the standard. Below, NHTSA discusses in greater detail the contents of the final rule and the reasons for its adoption.

Safety Need

As stated in the proposal, the number of LTV occupant fatalities increased during the 1980's, primarily due to the greatly increasing sales of these vehicles and the use of these vehicles for passenger transportation. From 1985 to 1989, annual LTV fatalities increased from 6,738 to 8,578. LTV occupant non-fatal injuries have also been increasing. For example, between 1985 and 1989, the annual number of such injuries increased from 583,000 to 763,000. Sales of LTV's increased from approximately 4.5 million vehicles in 1985 to 4.9 million vehicles in 1988. With record-breaking sales years in 1985, 1986, 1987 and 1988, and projected sales of over 5.0 million vehicles per year into the future, NHTSA believes that these trends of increasing fatalities and injuries will continue.

Side impacts are a significant cause of LTV occupant fatalities, accounting for about 19 percent of all LTV occupant fatalities. Between 1985 and 1988, total LTV fatalities in side impacts increased from 1,247 to 1,625 annually, and estimated AIS 3–5 injuries increased from 4,890 to 5,940. LTV fatalities in single-vehicle side impact crashes increased from 546 to 717 annually between those years, and estimated AIS 3–5 injuries increased from 1,960 to 2,380. (The abbreviation "AIS" refers to Abbreviated Injury Scale, which is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal. AIS 3–5 injuries are those which are serious-to-critical.)

NHTSA recognized that, as significant as side impacts are in causing LTV occupant fatalities, side impacts are an even greater source of passenger car occupant fatalities, accounting for 32 percent of such fatalities. NHTSA stated in the proposal that the agency was concerned about the side impact problem for both passenger cars and LTV's and is addressing the problem in rulemaking for all of these vehicles. NHTSA further stated that even though the side impact problem may be greater for passenger cars than for LTV's, this does not negate the seriousness of the problem for LTV's or the desirability of taking action to address the problem.

NHTSA stated in the proposal that extension of the side door strength requirements to LTV's would likely result in significant safety benefits by reducing the extent to which the side structure of the LTV is pushed into the passenger compartment in a side-impact collision. NHTSA anticipated that manufacturers would comply with the proposed requirements by installing a longitudinal beam in each side door.

NHTSA received a number of comments concerning the safety need for the proposed requirement. Chrysler Corporation (Chrysler), while stating that it could meet the proposed requirements, asserted that compliance with them would do little except add weight and cost to a vehicle. Chrysler further asserted that LTV's perform better than passenger cars in side

impact accidents, even without side door beams. Ford Motor Company (Ford) and the Motor Vehicle Manufacturers Association (MVMA) also asserted that LTV's without side door beams can offer at least equivalent side crush resistance as passenger cars with side door beams. The Insurance Institute for Highway Safety (IIHS) questioned whether door beams in LTV's have any significant effect in either vehicle-to-vehicle or vehicle-to-fixed-object impact. However, IIHS agreed that the requirements would provide better door latch integrity by strengthening the door latch supporting structure. IIHS stated that this would reduce ejection during rollover. Nissan Research & Development, Inc. (Nissan) asserted that side door beams would be less effective in MPV's than in passenger cars. J.E. Tomassoni stated that a side door beam would be beneficial in side impact crashes.

After reviewing comments, NHTSA concludes that there is a safety need for extending the side door strength requirements to LTV's. NHTSA acknowledges that the problem of side impacts with fixed objects may be greater for passenger cars than for LTV's. However, this does not obviate the seriousness of the problem for LTV's or the desirability of taking action to address the problem. NHTSA concludes that changes made in LTV's (i.e., the installation of side door beams) in response to the requirements will reduce fatalities and injuries in single-vehicle crashes involving many fixed objects. The principal benefit of side door beams is their ability to transfer crash forces into the strong pillar structures of the vehicle. This force transfer results in reduced door intrusion since, with the beam, the door structure will no longer be required to absorb all the crash energy. This concept is applicable to both passenger car and LTV doors. Thus, NHTSA concludes that the installation of beams in LTV's will result in a substantial reduction in door intrusion, thereby reducing the risk of occupant injury. More specifically, NHTSA concludes that side door beams will be effective in LTV's in reducing fatalities in single vehicle side impacts with tall, unyielding, fixed objects (e.g., a pole or tree) as they are in passenger cars. This is because the crash behavior of passenger cars and LTV's is very similar in this type of impact. NHTSA concludes that side door beams will reduce fatalities and injuries in side impacts by minimizing side door intrusion into the occupant compartment of the vehicle and reducing the impact velocity of contact between a door and a vehicle occupant. In addition, NHTSA concludes that side door beams will significantly improve the integrity of door latches by strengthening the door latch supporting structure and thus reduce side door ejections.

Practicability

NHTSA stated in the proposal that it expected manufacturers to comply with the proposed side door strength requirements by reinforcing the side doors with metal beams, a practice manufacturers have followed with passenger cars for a number of years. Ford commented that it has designed most of its LTV models without the space in the doors that would be needed for side impact door beams. Ford asserted that it would be costly and economically wasteful to package door beams as a running change to existing products. NHTSA has analyzed the information submitted by Ford. NHTSA concludes that it is possible for Ford and other manufacturers to meet the requirements by the September 1, 1993 effective date of the requirements of this final rule. NHTSA discusses the cost and leadtime issues raised by Ford in more detail in later portions of this notice.

Test Procedure

NHTSA proposed to specify the same test procedure for LTV's as that specified for passenger cars. Ford suggested that the test procedure be changed to present better an actual side collision with a tall, narrow, fixed object. Specifically, Ford suggested that the bottom edge of the loading cylinder be extended downward to within 25–50 mm above the ground. Ford asserted that this approach would be less design restrictive than the existing test procedure since it would give vehicle manufacturers the choice using door beams, strengthening the vehicle sill, or combining both design concepts. MVMA made the same suggestions as Ford. IIHS found merit in Ford's suggested test procedure. However, IIHS pointed out that the Ford procedure did not address the problem of the door opening during impact. IIHS asserted that this problem could be overcome by specifying that the door latch remain engaged and that both the door latch and the hinges remain attached to their mountings during the side door strength test. Range Rover of North America, Inc. (Range Rover) also asserted that the proposed test procedure is not representative of actual crash conditions. Range Rover suggested a "whole vehicle" intrusion test procedure that would have the test device extend above and below the highest and lowest parts of the vehicle in the vicinity of the test area.

NHTSA has evaluated the alternative test procedure suggested by Ford and MVMA (referred to hereafter as the "Ford procedure"). NHTSA believes that commenters have misconstrued the purpose of the side door strength test procedure. The purpose of test is to ensure that door stiffness is sufficient to preclude excessive intrusion in the occupant compartment in moderately severe crashes, not to replicate certain actual side impacts. The Ford procedure would have a loading device engage both the door and the sill. This, the Ford procedure would assess the composite crush strength of the still and the door combined. The Ford test method would not ensure adequate side door strength as long as the sill structure is the primary load path in the test. This could result in less occupant protestion since door strength in important in side impact collisions with fixed objects. In 1984 and 1985, NHTSA conducted four 45-degree-rigid-pole-side-impact tests. The test results show that the maximum compartment intrusion usually occurs at middle-door height, where a side door beam would provide protection.

In addition, NHTSA is not convinced that the Ford test procedure is representative of many side impact collisions with fixed objects. Vehicles are often rolling when they hit fixed objects. When vehicles are rolling, a fixed object may not engage the sill, as in the Ford test procedure, before excessive door intrusion occurs. NHTSA believes that during off-road sideways sliding, a vehicle's wheels often dig into the ground or are "tripped" on an object and the vehicle tilts in the direction of the slide. This results in the initial impact of the vehicle being close to the occupant's chest height, where a side door beam should provide protection. Rollover crashes are a frequent crash mode for LTV's, accounting for 48 percent of LTV occupant fatalities in 1988, compared to 24 percent for passenger cars. Since rollovers are a large component of the LTV safety problem, NHTSA believes that it is reasonable to conclude that many of the LTV rollovers involve the LTV in a rolled or tilted configuration as it strikes a fixed object in the door region.

Further, NHTSA is concerned that an LTV could "pass" the Ford test procedure even if it had very thin doors with practically no energy absorption capability. NHTSA recognizes that there is an option of proposing the Ford test procedures, but specifying higher force levels if the sill is engaged. However, NHTSA does not believe that this

approach would measure a side door's resistance to crush any better than the current procedure. Further, the Ford approach would require much additional research and would delay this rulemaking. NHTSA does not believe that such delay is appropriate in view of the safety benefits that NHTSA expects to result from the adoption of this final rule.

Another disadvantage of the Ford test procedure is that it does not adequately address the integrity of the door latch system. A door latch could disengage or separate from its mounting during the test and still "pass" under the Ford procedure because the sill structure could provide needed strength to meet the requirements. NHTSA acknowledges that additional door latch integrity requirements could be added to the Ford procedure, as suggested by IIHS. However, this also would require much additional research and would delay this rulemaking. NHTSA does not believe that such delay is appropriate in view of the safety benefits that NHTSA expects to result from the adoption of this final rule.

The test procedure suggested by Range Rover would test the crush of the side door, the sill, and the roof and is similar to the procedure suggested by Ford. NHTSA believes that its evaluation above of the Ford suggestion also applies to the Range Rover suggestion. As with the Ford procedure, the Range Rover test would not specifically address door intrusion, the principal benefit of the current test procedure for side door strength.

J. E. Tomassoni recommended that Standard No. 214 be modified to assure that the side structure will resist a significant force level to a distance of 18 inches. The standard currently allows the peak force to be reached at any distance up to 18 inches during the quasi-static test procedure. NHTSA is not amending the standard as recommended by Mr. Tomassoni. NHTSA believes that such an amendment would be beyond the scope of the proposed rule. In addition, NHTSA is not convinced that such a change in the standard is necessary. If the peak force is reached before 18 inches, this value will be sufficient to ensure the energy absorption level of the side door in this simulated crash environment is sufficient for providing occupant protection.

GM stated that careful study is needed to determine if a quasi-static crush test of side door strength and a dynamic crash test are both warranted for LTV's. NHTSA will undertake further research and will analyze the need for dynamic test requirements further before proposing any dynamic crash test for LTV's.

Ford asked whether double opening side cargo doors should be considered as two separate doors or treated as a system. This would affect where the longitudinal location of the loading cylinder is positioned for the side door strength test. NHTSA concludes that such doors should be treated as a system and tested simultaneously. NHTSA believes that the mid-point is the weakest region of double-opening doors. NHTSA believes that the test should determine the crush characteristics of the weakest region of the door, where the greatest intrusion is likely to occur. As discussed above, the purpose of the side door beam is to transmit loads to the pillar structures of the vehicle. These structures are at the ends of the door and generally have door hinges on one pillar and a door lock and latch on the other pillar. The door beam transmits crash forces through these hinges and the lock and latch mechanism into the pillars. Such a force-transmitting design will have its greatest deflection when the loads are applied at the mid-point. Such a test condition will ensure that, if a door has adequate strength and associated low intrusion at the mid-point, the strength will be at least as great at other locations. NHTSA intends to propose an amendment to section S.4 of Standard No. 214 in the near future to deal with the test procedure for double-opening doors. NHTSA also intends to propose an amendment to that section of the standard to clarify how a vehicle door without a window should be tested.

J. E. Tomassoni stated that section S3.2 of Standard No. 214 contains a typographical error (i.e., it refers to "the requirements of S3.2.1 through S3.2.2" rather than to "the requirements of S3.2.1 through S3.2.3). NHTSA agrees with Mr. Tomassoni and has corrected that error in this final rule.

Vehicle Population

NHTSA proposed to extend the side door strength requirements of Standard No. 214 to all LTV's with a GVWR of 10,000 pounds or less. In the proposal, NHTSA stated that the agency may consider extending the requirements on a more limited basis in the final rule.

NHTSA received a number of comments on the proposed vehicle population. General Motors Corporation (GM), Ford, and Chrysler suggested that the requirements be extended only to LTV's with a GVWR of 8,500 pounds or less and an unloaded vehicle weight (UVW) of 5,500 pounds or less. GM stated that in many of the vehicles with a GVWR between 8,500 and 10,000 pounds, occupants sit relatively high and would not benefit from a side door beam. Ford and Chrysler stated that their suggested weight limits would be consistent with those in Standard No. 208 for manual seat belts. The commenters also asserted that the lower weight limits would reduce the burden imposed on final-stage manufacturers and alterers. The National Truck Equipment Association (NTEA) opposed the extension of the side door strength requirements to commercial or vocational vehicles manufactured in two or more stages and outfitted with cargo carrying or work-related equipment. NTEA stated that if NHTSA decides to cover such multi-stage vehicles, limiting the extension of the requirements to vehicles with a GVWR of 8,500 pounds or less and an UVW of 5,500 pounds or less would be of significant assistance to the truck body and equipment industry since it would exclude many multi-stage vehicles. NTEA further stated that they would prefer limiting the extension of the requirements to vehicles with a GVWR of 6,000 pounds or less and a UVW of 5,000 pounds or less. NTEA asserted that the vehicles in this latter weight category are the ones most likely to be used for passenger transportation and for which passenger car saftey standards would be most appropriate. The Recreation Vehicle Industry Association (RVIA) requested that NHTSA exclude motor homes, van conversions, and vans from the side door strength requirements. RVIA asserted that such vehicles are larger and much stronger structurally than passenger cars. If NHTSA decides not to exclude such vehicles, RVIA requested that the requirements only apply to vehicles with a GVWR of more than 6,000 pounds.

Grumman Olson requested that walk-in vans be excluded from the extension of the side door strength requirements. Grumman Olson asserted that the basic design of the walk-in van protects occupants during side impacts. According to Grumman Olson, there is typically only one seating position in a walk-in van. The driver's shoulder is typically eight to 18 inches away from the side of the vehicle, thus providing crush space in the event of a side impact. Grumman Olson also stated that walk-in vans have sliding doors as side doors. Grumman Olson asserted that addition of a door beam to such a sliding door would not be sufficient for compliance with the side door strength test. The commenter further asserted that additional weight and/or structure would have to be added for compliance. According to Grumman Olson, such an

increase in structure would decrease driver visibility and result in increase accidents at intersections. The commenter also stated that the increased weight would increase the effort required to operate the door and thus increase driver fatigue. The commenter further stated that the size of the lower guard would have to increased to meet the side door strength requirements. Grumman Olson contended that this would result in a tripping hazard since the door guide is at the outside edge of the step. Mercedes-Benz of North America, Inc. (Mercedes-Benz) suggested that NHTSA target the side door strength requirements of Standard No. 214 to those vehicles that would "truly benefit in single-vehicle accidents from the addition of side door beams."

After considering the comments and other information, the agency has decided to extend the side door strength requirements to LTV's with a GVWR of 10,000 pounds or less, except for walk-in vans. As discussed above, NHTSA has concluded that there is a safety need to extend the side door strength requirements of Standard No. 214 to LTV's. NHTSA has further concluded that the requirements would also serve a safety need in LTV's with a GVWR between 8,500 and 10,000 pounds. While commenters asserted that vehicle occupants typically sit higher in such vehicles, NHTSA has concluded that this does not lessen the safety need for side door strength requirements. In side impacts with poles and trees, the objects struck are typically taller than the LTV and its occupants. Research conducted by NHTSA indicates that the weight of a vehicle does not have a strong effect on the risk of injury to vehicle occupants in side crashes. Thus, LTV's between 8,500 pounds and 10,000 pounds GVWR do not offer greater crash protection in side impacts than LTV's less than 8,500 pounds GVWR. Further, the test procedure adopted by this final rule would specify a peak crush resistance of 12,000 pounds for all vehicles. Thus, there is no additional burden established for vehicles over 8,500 pounds GVWR. As discussed more fully in a later portion of this notice, NHTSA has also concluded that issues concerning the certification of compliance with the side door strength requirements of Standard No. 214 for multi-stage vehicles can be resolved for vehicles less than 10,000 pounds GVWR. Further, GM suggested an alternative of excluding walk-in vans from coverage if the GVWR cut-off was set at 10,000 pounds. NHTSA has adopted that alternative in this final rule.

NHTSA is excluding walk-in vans because the agency has concluded that it is impracticable for such vehicles to meet the side door strength requirements because of their special design features. As pointed out by Grumman Olson, a simple addition of a side door beam would not be sufficient to comply with the side door strength requirements. Rather, manufacturers would have to add additional weight and structure and completely change the side of the vehicle. NHTSA agrees with Grumman Olson that this increased weight and structure could have other safety implications.

NHTSA has decided to include motor homes, vans, and van conversions in the final rule. NHTSA does not agree with RVIA that there is a lesser safety need for covering such vehicles. That commenter stated that occupants of these vehicles are seated well above the most likely points of initial side impact in a vehicle that is larger, much stronger structurally, and provides more protection against side impacts than a passenger car. As discussed above, however, in side impacts with poles and trees, the objects struck are typically taller than the LTV and its occupants, and research conducted by the agency indicates that the weight of a vehicle does not have a strong effect on the risk of injury to vehicle occupants in side crashes. Thus, there are no indications of any lesser safety need for side impact protection in these vehicles. These vehicles are driven on the same roads and at the same times as other LTV's, and are thus subject to the same safety risks as other LTV's. NHTSA is not aware of any special characteristic of these vehicles that would reduce such risks. Moreover, neither RVIA nor any other commenter identified any characteristic in the design of these vehicles that would make it harder to meet the side door strength requirements than in other type of LTV's, nor is NHTSA aware of any such characteristic. Further, the cost of installing side door beams in these vehicles will not exceed the cost of installing them in other LTV's. After examining these factors, there is no apparent basis for excluding these vehicles from the side door strength requirements.

As mentioned above, NTEA suggested excluding certain vehicles produced in two or more stages from the side door strength requirements of Standard No. 214. NTEA asserted that NHTSA has not demonstrated that there is a safety need to extend the requirements to such vehicles. In the Final Regulatory Impact Analysis, NHTSA has analyzed the potential safety benefits of this final rule. However, NHTSA disagrees with the premise that the agency must quantify the magnitude of the safety problem and the safety benefits gained through adoption or extension of a safety standard for every conceivable subclass of a particular type of vehicle. NTEA apparently believes that NHTSA must demonstrate through analysis of crash data that there is a safety need to protect occupants of every conceivable subclass of light truck (e.g., tow trucks, ambulances, bread delivery vehicles, public utility vehicles, snow plows, dump trucks, etc.). A similar argument was also made by RVIA. Crash data broken down by such discrete subclasses of LTV's are not available. Even if such detailed data were available, the data cells would likely be too small to draw statistically valid conclusions.

However, the National Traffic and Motor Vehicle Safety Act does not require this degree of specificity. Section 103(f)(3) of the Safety Act requires that a safety standard be "appropriate for the particular types of motor vehicle * * * for which it is prescribed." In 49 CFR 571.3, NHTSA has defined the types of motor vehicles and, for this rulemaking, the relevant vehicle types include trucks, multi-purpose passenger vehicles (MPV's), and buses with a GVWR of 10,000 pounds or less. NTEA's assertion that vehicles manufactured in more than one stage constitute a separate type of vehicle is not substantiated and runs counter to the Safety Act's legislative history. The Senate Report states that differences in safety standards "would be based on the type of vehicle rather than its place of origin or any special circumstances of its manufacture." S. Rep. No. 1301 (89th Cong., 2d Sess.) at 6.

In its comments, NTEA did not explain how its members' vehicles either offer improved side door strength or why the occupants of such vehicles do not require such protection. NTEA provided no data or even anecdotal information to support its position that the extension of the side door strength requirements of Standard No. 214 to vehicles manufactured by its members is not necessary. Since these vehicles are driven on the same roads and at the same times as other LTV's, they are subject to the same safety risks as other LTV's, absent some special vehicle characteristic that would reduce such risks. Indeed, the risk to occupants of many vehicles produced by NTEA members may even exceed that to occupants of other LTV's. For example, occupants of vehicles used for emergency or rescue purposes (e.g.,

ambulances and tow trucks) may be at greater risk than occupants of other LTV's.

NTEA has argued in other rulemakings involving extensions of safety standards to LTV's that because vehicles manufactured by its members are not intended to transport passengers and because they are driven by professionals, there is less safety need to apply safety standards to such vehicles. First, many LTV's manufactured by NTEA's members typically have passengers. Examples of such vehicles include ambulances (where an injured or ill person and a medical technician are typical passengers), tow trucks (where the disabled vehicle's driver is a typical passenger), and utility vehicles (which often have a two-person crew). Second, even if a light truck does not typically have passengers, NHTSA is still concerned about the risk to the driver. Indeed, 70 percent of all fatalities in light truck crashes are drivers. Finally, NTEA does not show that LTV's manufactured by its members are somehow safer because their drivers are "professionals." NTEA submitted no information about any special training or licensing requirements for operators of such LTV's and NHTSA is not aware of any such requirements.

Further, there is a legal issue concerning whether NHTSA is able to exclude vehicles produced in two or more stages from Standard No. 214. The court stated in *Chrysler Corp. v. Dept. of Transportation* that any differences between standards for different classes of vehicles are to "be based on type of vehicle rather than its place of origin or any special circumstances of its manufacturer." 472 F.2d 659, 679 (6th Cir. 1972). Thus, under this decision, NHTSA may not exclude vehicles from Standard No. 214 simply because they are manufactured in two or more stages. NHTSA acknowledges that a recent decision in *National Truck Equipment Association* v. *NHTSA*, 919 F.2d 1148 (6th Cir. 1990), seems to indicate that NHTSA does have authority to exclude commercial vehicles manufactured in two or more stages from coverage under a safety standard. However, even if authority can be found in the statute for such an approach, NHTSA does not believe that the approach would be appropriate here. NHTSA believes that the occupants of LTV's manufactured in two or more stages should be provided the same protection in side impacts as occupants of other LTV's. As discussed above, NHTSA does not believe that LTV's manufactured in two or more stages have any characteristics which provide better occupant protection in side impact collisions than other LTV's and NTEA did not offer any information to support such a conclusion. Later in this preamble, NHTSA discusses ways that final-stage manufacturers and alterers may comply with Standard No. 214.

Exclusion of Certain Side Doors

In the NPRM, NHTSA proposed to exclude certain side doors from coverage under the standard since the agency tentatively concluded that adding side beams to such doors would likely have little or no safety benefit. Specifically, NHTSA proposed to exclude: (1) Any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and (2) any side door located adjacent to hardware for installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1).

In the NPRM, NHTSA also requested comment on whether the agency should exclude rear side van doors where a small portion of the front of that side door is adjacent to the rear of the front seat. NHTSA further requested comment on whether rear side doors adjacent to the aisleways in some vans should be excluded from coverage even if the seating positions on the other side of the aisleways might not be "outboard seating positions" as defined in 49 CFR 571.3 because those aisle seats could be less than 12 inches from the side of the vehicle. Finally, NHTSA requested comment on whether any other doors, such as detachable doors, should be excluded from coverage.

NHTSA received a number of comments on these issues. Motor Voters urged NHTSA to consider covering doors with no seating position nearby. According to Motor Voters, this would reduce the likelihood of ejection through those doors of unrestrained passengers seated in other positions or riding unseated in the rear of vans and minivans. The American Medical Association (AMA) opposed an exclusion for LTV doors that are not next to an outboard seat. AMA was concerned that any exclusion would encourage manufacturers to design LTV's to circumvent the side door strength requirements. RVIA supported the proposed exclusion of side doors that are not located adjacent to an outboard designated seating position. RVIA stated that this proposed exclusion would not adversely affect safety and would provide relief by reducing the number of doors that van converters (and motor home manufacturers if motor homes were covered in the final rule) would be required to test for compliance.

Chrysler supported the exclusions proposed by NHTSA in the NPRM. In addition, Chrysler supported an exclusion for doors in vans with seats on the aisle that are less than 12 inches from the side of the vehicle and, therefore, are outboard designated seating positions. Chrysler asserted that, because of the separation afforded by the aisleway, these doors will not have occupants sitting immediately adjacent to them and that adding side door beams would be of little benefit. Chrysler further supported an exclusion for side van doors where a small portion of the front of the door is adjacent to the rearmost part of a front outboard seating position. Chrysler suggested that the door be excluded unless the seat at its rearmost adjusted position extended into the projected door opening to the extent that the H-point was adjacent to the door or door opening. According to Chrysler, this suggested exclusion would apply even if a seat were not installed as original equipment, but could be installed at a later date using hardware available at that outboard seating position. Finally, Chrysler supported an exclusion for detachable doors. Chrysler pointed out that its Jeep Wrangler sport utility vehicle has light-weight, detachable doors. Chrysler asserted that the purchaser of a vehicle with light-weight, detachable doors would perceive that the doors do not meet side door crush performance requirements, just as the owner of a convertible is aware that the vehicle will not meet roof crush requirements. Nissan Research & Development, Inc. (Nissan) stated that an exclusion from the side door strength requirements is justified for doors where the only seat adjacent to the door is located an extended distance from the door (i.e., when a door is next to an aisle). Nissan asserted that there is a low possibility of injury from door intrusion to the seat's occupant in such a case. However, Nissan stated that studies of the relationship between the degree of door intrusion and injuries sustained were necessary to determine the appropriate distance between the inner surface of the door and the seat necessary to qualify for an exclusion. Nissan also stated that the criteria in NHTSA's proposed regulatory text concerning the exclusion for certain

doors was unclear. Nissan recommended that the final rule exclude doors if, when adjacent outboard seats are adjusted anywhere within their forward-most or rearward-most range and with the seatbacks and seat lifters adjusted to the manufacturer's nominal design riding position, no portion of the torso of an SAE J826b test mannequin that is positioned in a seat is within the door opening projection.

NHTSA also received one comment supporting an extension of the strength requirements to structures that were not covered in the proposal. J. E. Tomassoni suggested that Standard No. 214 be modified to establish strength requirements for all side structures that are located adjacent to seats, not just doors.

After considering comments and other information, NHTSA has decided to exclude the following types of side doors from coverage under the final rule:

(1) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a mannequin placed in any seat, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal projection of the door's opening.

(2) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a mannequin placed in any seat recommended by the manufacturer for installation in a location for which seat anchorage hardware is provided, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal projection of the door's opening.

(3) Any side door located so that a portion of a seat, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal protection of the door's opening, but a longitudinal vertical plane tangent to the outboard side of the seat cushion is more than 10 inches from the innermost point on the inside surface of the door at a height between the H-point and shoulder reference point (as shown in figure 1 of the Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front edge of the cushion with the seat adjusted to its forwardmost position and the rear edge of the cushion with the seat adjusted to its rearmost position.

(4) Any side door that is designed to be easily attached to or removed (e.g., using simple hand tools such as pliers and/or a screw driver) from a motor vehicle manufactured for operation without doors.

The first two exclusions are for doors that are unlikely to have vehicle occupants sitting near them. As discussed in the preamble to the NPRM, NHTSA believes that there is little safety benefit from having a side door beam for doors that are unlikely to have vehicle occupants sitting near them. While commenters asserted that covering doors with no seating positions nearby would reduce the likelihood of ejection through those doors of unrestrained passengers seated in other positions or riding unseated, NHTSA has concluded that the potential safety benefit would be insignificant and would not be justified in view of the cost of installing door beams in those doors. The principal benefit of side door beams is the reduction in passenger compartment intrusion. This reduces the risk of injury for occupants seated near the door. Little safety benefit would be gained by requiring side beams in door with no passengers seated near them.

After considering public comments, NHTSA has altered the scope of the first two exclusions to exclude a door from coverage even if a small portion of the front of that side door is adjacent to the rear of the front seat. NHTSA has concluded that, in a side impact with a fixed object, a door beam in the rear side door would provide little protection to a vehicle occupant sitting in the front seat. The occupant of such a seat is unlikely to be exposed to door intrusion in a such side impact.

The third exclusion is for doors with an adjacent designated seating position more than ten inches from the inside surface of the vehicle. NHTSA has added this exclusion after considering public comments that doors should be excluded from coverage if the adjacent seats are on the other side of an aisleway of at least ten inches. NHTSA is excluding such side doors because NHTSA has concluded that vehicle occupants seated in such locations would benefit only minimally from the reduction in intrusion into the passenger compartment resulting from side door beams in a typical side impact with a fixed object. Based on available data, NHTSA has concluded that the intrusion into the occupant compartment is generally about four to six inches less than the exterior crush. Therefore, in a crash of moderate severity with an exterior crush of 12 to 16 inches, the intrusion into the occupant compartment would be about 7 to 11 inches.

NHTSA is excluding side doors designed to be easily attached to or removed from motor vehicles manufactured for operation without doors because such doors have design features which make compliance with the side door strength requirements technologically and/or economically impracticable. As pointed out in the preamble to the NPRM, such doors may be made of plastic fabrics and metal wire frames and would not be able to meet the side door strength requirements. NHTSA has concluded that these doors cannot be redesigned to meet the requirements without completely changing the side of the vehicle.

Further, NHTSA does not believe that vehicle manufacturers will produce a new type of vehicle simply to avoid the side door strength requirements as suggested by one commenter. Although such doors have been excluded from coverage under Standard No. 206, *Door Locks and Door Retention Components*, NHTSA does not believe that manufacturers have produced vehicles with those doors simply to qualify for that exclusion.

NHTSA did not adopt the suggestion of J. E. Tomassoni to test all side structures adjacent to seats. First, NHTSA believes that such an amendment to the standard would be outside the scope of the proposed rule. Second, NHTSA does not have data to justify such a requirement for non-door structures. In fact, NHTSA believes that the non-door regions generally have higher crush strength characteristics than the door regions because of the surrounding supporting structure.

Safety Benefits of the Rule

As indicated above, in November 1982, NHTSA published an evaluation of the side door strength requirements for passenger cars. The report concluded that single vehicle side impact occupant fatalities were reduced by 14 percent. For side impacts with tall fixed objects and guard rails, the fatality reduction of side door beams was 23 percent. The report concluded that the standard did little to reduce fatalities in multi-car side impact collisions.

In the NPRM, NHTSA attributed the benefits of the side door strength requirements to the following facts: (1) The added side door beam helps to make a pole, tree, guardrail or other fixed object slide by the occupant's position, thus reducing intrusion into the passenger compartment, and (2) the strengthened striker/latch area of the door helps reduce ejections.

In the NPRM, NHTSA noted that two injury mechanisms are likely to occur in a typical side impact with a fixed object. First, the occupant strikes the door. This

occurs before door intrusion reaches its maximum and added padding is beneficial to reducing the potential for injury then. Second, the intruding object (or the side structure of the vehicle when pushed inward by the fixed object) may strike the occupant. A side door beam reduces the possibility of this second injury mechanism from occurring.

NHTSA, in the NPRM and the Preliminary Regulatory Impact Analysis (PRIA), estimated that adding side door beams to LTV's would result in about 110 fewer fatalities and 950 fewer AIS 3–5 injuries each year. In calculating benefits, the NHTSA assumed in the NPRM and the PRIA that the effectiveness of side beams for LTV's involved in side-impact crashes would be the same as side beams for passenger cars. NHTSA made this assumption because: (1) Many LTV's are exposed to the same traffic environment as cars, (2) side door beams are most effective in reducing occupant injuries in single-vehicle crashes, where the mass and height of a vehicle have little effect (unless the vehicle is involved in a rollover), and (3) the doors currently used on LTV's are similar to the doors used on passenger cars prior to the establishment of side door strength requirements for passenger cars. Since LTV's were not yet equipped with side door beams, NHTSA was unable to evaluate their effectiveness more thoroughly. Since light truck occupants generally sit higher than passenger car occupants, NHTSA presumed that they are less vulnerable in multi-vehicle collisions involving passenger cars. In side impacts with poles and trees, however, the objects struck are typically taller than either a passenger car or LTV. Therefore, the height differences between cars and LTV's would not affect the utility of side door beams in side impacts with poles and trees.

NHTSA also stated that installing side beams in LTV's could help reduce ejections in rollover or other non-side-impact crash modes. However, the agency did not attempt to quantify the potential benefits in those areas.

NHTSA received a number of comments concerning the projected benefits. As discussed above, a number of commenters asserted that side door beams would be less effective in LTV's than in passenger cars. Therefore, some commenters (e.g., Ford) asserted that NHTSA had overestimated potential safety benefits in the NPRM and PRIA. Ford asserted that the effectiveness of side door beams in single vehicle accidents was a function of accident type and that LTV's have a different distribution of accident types than passenger cars. Ford suggested a different methodology for estimating benefits based on this different distribution of accident types. In addition, some commenters further asserted that side door beams may have an adverse effect in vehicle-to-vehicle side impact collisions. Ford asserted that the "benefits" of side door beams may even be negative.

As discussed above, NHTSA has concluded that side door beams will reduce fatalities and injuries in side impacts by minimizing side door intrusion into the occupant compartment of the vehicle and reducing the impact velocity of contact between an intruding door and a vehicle occupant.

After considering the comments, NHTSA has analyzed further the estimates of benefits from the extension of the side door strength requirements to LTV's. NHTSA agrees with Ford that there is a difference in accident types between passenger cars and LTV's. NHTSA has estimated benefits for this final rule using a methodology similar to the one suggested by Ford for this aspect of the analysis.

NHTSA estimates that this final rule will avoid 59 to 83 fatalities and 914 to 1,223 non-fatal hospitalizations in single vehicle crashes. In multi-vehicle crashes, NHTSA estimates that this final rule will avoid 672 to 685 non-fatal hospitalizations. These estimates do not include potential benefits from possible reduced ejections in rollover or other non-side-impact crashes. NHTSA cannot quantify such potential benefits at this time. A more detailed analysis of benefits appears in the Final Regulatory Impact Analysis (FRIA).

NHTSA does not accept the assertion that side door beams have an adverse effect in vehicle-to-vehicle side impact collisions. Simulation studies have shown that the contact velocity of the occupant in a vehicle-to-vehicle side impact is reduced by a side door beam. Since contact velocity is related to injury potential, it is unlikely that side door beams could have an adverse effect in vehicle-to-vehicle side impact collisions.

Costs of the Rule

In the NPRM and the Preliminary Regulatory Impact Analysis (PRIA), NHTSA estimated that the cost of adding a side door beam to comply with the proposed side door strength requirements would average between $16.15 and $28.16 per LTV. Including the lifetime fuel costs of carrying the extra weight of the side door beams, NHTSA estimated that the cost per vehicle would average between $38.93 and $51.35. In the NPRM and the PRIA, NHTSA stated that another possible cost relates to secondary weight (i.e., weight increases in other parts of the vehicle which might be made to compensate for the additional weight of side door beams). In the NPRM and the PRIA, NHTSA illustrated the potential impact of secondary weight by assuming that 0.7 pounds of secondary weight is added for each pound of primary weight (i.e., the weight of the side door beams). With these assumptions, NHTSA estimated that the total cost per vehicle would average between $60.99 to $78.13. NHTSA also estimated that the cost of conducting a compliance test for the side door strength requirements would be about $1,600.

NHTSA received comments on the estimated costs of the proposed rule. RVIA asserted that each side door strength test performed by an independent test facility would cost $6,290. According to RVIA, this figure does not include the cost of replacing or repairing doors destroyed or damaged by the test nor other costs for design, engineering, manufacturing, or administrative support. As stated in the FRIA, compliance costs for the side door strength test for passenger cars were about $2,000 per test in 1988. NHTSA expects that the costs will be similar for LTV's. Thus, NHTSA believes that the costs generally should not be as high as asserted by RVIA. Further, even if the RVIA figure is correct, NHTSA believes that the testing costs will be negligible for almost all LTV's on a per vehicle basis.

Ford asserted that it would have difficulty meeting the requirements for one of its LTV models without making major design changes, which would be very costly. Ford estimated potential design and tooling costs in a confidential submission to NHTSA. However, since submission of its initial comment, Ford has developed and demonstrated to NHTSA a relatively simple way of meeting the side door requirements for the LTV model in question, without major design changes. Therefore, Ford's initial estimate of costs is no longer valid.

After considering the comments on the estimated costs of the proposed rule, NHTSA estimates that the cost of adding side door beams to comply with the final rule will average between $14.31 and $24.31 per covered LTV. NHTSA further estimates that the lifetime fuel costs of carrying the extra weight of the side door beams will average between $16.66 and $17.97. Thus, NHTSA estimates that the cost per vehicle will average between $30.97

and $42.28. NHTSA also performed a sensitivity analysis to illustrate the potential impact of secondary weight, assuming that 0.7 pounds of secondary weight is added for each pound of primary weight (i.e., the weight of the side door beams). With these assumptions, NHTSA estimated that the total cost per vehicle would average between $50.51 and $63.34. The above estimates all exclude the cost of adding side door beams to the rear side doors of vans since many of these doors are not covered by the requirements of this final rule. A more detailed analysis of the costs of the final rule appears in the FRIA.

Compliance by Multi-Stage Manufacturers

In the proposal, NHTSA addressed the issue of LTV's that are manufactured in more than one stage or altered after they are certified by the original manufacturer. There are a number of final-stage manufacturers, many of which are small businesses, involved in installing truck bodies and/or work-related equipment on chassis. There are also a number of alterers involved in modifying the structure of new vehicles. Under NHTSA's regulations, a final-stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards and alterers must certify that the altered vehicle continues to comply with all applicable safety standards. Throughout the rest of this preamble, the term "final-stage manufacturer" is used to refer to both final-stage manufacturers and alterers.

In the proposal, NHTSA stated that the compliance test for side door strength is a destructive, whole system test, which could be difficult and/or expensive for many final-stage manufacturers to conduct, especially if they conducted such testing on many different types of vehicles. However, NHTSA stated that the vast majority of final-stage manufacturers would have available means to certify compliance that would not require testing. NHTSA's regulations require the manufacturers of truck or van chassis used by final-stage manufacturers to provide information on what limitations must be observed for the completed vehicle to comply with safety standards. The final-stage manufacturer can base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer. NHTSA stated in the proposal that, since the truck or van chassis purchased by final-stage manufacturers generally have side doors and the final-stage manufacturers generally do not change the side doors or structure supporting the side doors, certification with the proposed requirements could generally be based on staying within the incomplete vehicle manufacturer's limits. NHTSA also stated that if a final-stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid such certification by not installing a seat (or hardware for a seat) adjacent to the door.

NHTSA also stated in that proposal that some final-stage manufacturers, including some manufacturers of motor homes, build their own vehicle body structures, which include side doors. NHTSA further stated that these manufacturers are generally larger than most final-stage manufacturers and have greater engineering and testing expertise. The agency stated that it did not believe that the proposed requirements would be unduly burdensome to these manufacturers.

NHTSA tentatively concluded that the proposed requirements would not result in any significant burdens to final-stage manufacturers. However, the agency requested comments on the issue. NHTSA stated that, depending on the comments, the agency may consider options such as limiting application of the standard to vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, and/or excluding certain vehicles such as motor homes.

NHTSA received a number of comments on these issues. GM was concerned about coverage of "chopped" or "cut-away" chassis-cab incomplete vehicle models. GM stated that cut-away chassis-cab models are structurally very different from standard pickups or vans. According to GM, the open-rear design of these vehicles, which allows conversion into motor homes and various commercial trucks, lacks rear structure which may be needed to meet the side door strength requirements of the standard. RVIA was concerned about the impact of the proposed requirements on van converters.

The National Truck Equipment Association (NTEA) opposed the extension of the side door strength requirements to commercial or vocational trucks produced in two or more stages and which are designed to carry cargo or work-related equipment. NTEA acknowledged that extension of the side door strength requirements to LTV's should not pose a significant problem for many of the vehicles produced in the truck body and equipment industry. NTEA agreed with NHTSA that many final-stage manufacturers should be able to pass through the incomplete vehicle manufacturer's compliance certification for the requirements. NTEA further agreed with NHTSA that most, if not all, modifications performed by final-stage manufacturers should not affect compliance with the requirements. However, NTEA raised two possible areas of concern. First, for incomplete chassis-cabs, there will be no incomplete vehicle manufacturer's certification to pass-through. Second, since the requirements do not currently apply to LTV's, companies in the truck body and equipment industry do not know what limitations incomplete vehicle manufacturers will place on completed chassis-cabs to allow final-stage manufacturers to pass through the compliance certification for the side door strength requirements of Standard No. 214.

After considering these comments and other information, NHTSA has concluded that these requirements do not pose an unreasonable burden for final-stage manufacturers. NHTSA below outlines ways that final-stage manufacturers may certify compliance.

First, the final-stage manufacturer could stay within the limits set by the incomplete vehicle manufacturer. NHTSA's certification regulations require that the manufacturers of truck chassis used by final-stage manufacturers provide information regarding the limitations on the center of gravity, weight, and other attributes that must be observed in completing the vehicle so as not to affect the vehicle's compliance with the safety standards. Incomplete vehicle manufacturers which produce chassis-cabs must certify that their vehicles comply with applicable safety standards. Incomplete vehicle manufacturers which produce other vehicles that are not chassis-cabs (e.g., cutaway chassis or stripped chassis) are not required under NHTSA regulations to certify that their incomplete vehicles comply with safety standards. However, such manufacturers must provide subsequent stage manufacturers with an "incomplete vehicle document" that describes the limits within which the vehicle can be modified and still remain in compliance with safety standards. When the final-stage manufacturer observes the limits set by the incomplete vehicle manufacturer, it simply states that fact on the certification label. Under those circumstances, its certification of the vehicle's compliance with the safety standards is based on staying within the limits set by the incomplete vehicle manufacturer. Thus, if the final-stage manufacturer observes all of the limits specified by the incomplete vehicle

manufacturer, the final-stage manufacturer does not have to conduct any testing or analysis to support its certification that the vehicle complies with the safety standards.

NHTSA believes that final-stage manufacturers will be able to pass through the certification for a large percentage of multi-stage vehicles. NTEA agreed with this point in its comments. The side doors and structure supporting the side doors on multi-stage vehicles are generally not changed by final-stage manufacturers. New side doors are rarely fabricated for multi-stage vehicles, except walk-in vans and motor homes. As discussed above, walk-in vans are excluded from the side door strength requirements. Final-stage manufacturers which build their own vehicle body structures, including some manufacturers of motor homes, are generally larger than most final-stage manufacturers and have greater engineering and testing expertise. NHTSA believes that any manufacturer which has the resources and expertise to build its own vehicle body structures can easily add side door beams to the doors of its vehicles and conduct or sponsor any testing needed for certification. If a final-stage manufacturer added a rear side door and did not wish to certify compliance for the vehicle, it could avoid this by not installing a seat (or hardware for a seat) within ten inches of the door.

NHTSA believes that van converters will also be able to rely on prior certification of compliance with Standard No. 214. NHTSA believes that the front side doors of vans will be produced in compliance with the side door strength requirements because seats will be near the front side doors. NHTSA acknowledges that the rear side doors of some vans are not required to meet the side door strength requirements because the van has an aisle of ten or more inches between the seat and the door. In such a case, the van converter could rely on the prior certification if it limited installation of seats to areas at least ten inches from the door. In addition, van producers may respond to the market demand for vans with more possible seating positions and produce vehicles with rear side doors that meet the side door strength requirements.

NHTSA acknowledges that final-stage manufacturers of some vehicles (e.g., incomplete chassis cabs and cut-away chassis without structure for the side doors) may not be able to certify compliance with the standard by staying within the limits set by incomplete vehicle manufacturers. However, NHTSA does not believe that this will create significant difficulties. NHTSA believes that the final-stage manufacturer, with advice and direction from the incomplete vehicle manufacturer, can add sufficient structure to certify such a vehicle. Further, NHTSA does not believe that each final-stage manufacturer would have to conduct its own testing of such vehicles. If testing is necessary, final-stage manufacturers could sponsor testing by a company with testing expertise. In addition, it may not be necessary to test each vehicle type. In appropriate situations, a final-stage manufacturer may be able to conduct or sponsor engineering analysis and/or computer simulations sufficient to enable it to certify, with due care, that a completed vehicle complied with applicable safety standards, including the side door strength requirements of Standard No. 214.

NHTSA also notes that NTEA did not assert that certification would be difficult or impossible for any of its members, only that there could be some difficulties. Without any data to support the request by NTEA for exclusions of vehicles produced by its members, NHTSA is reluctant to exclude those vehicles from the safety standard.

Leadtime

NHTSA stated in the proposal that manufacturers could comply with the proposed requirements by adding side door beams to the side doors of LTV's, similar to those used in passenger cars. Since manufacturers have considerable experience in meeting Standard No. 214's requirements for passenger cars, NHTSA proposed allowing a leadtime of two years for manufacturers to design, tool, and test the necessary modifications. Specifically, NHTSA proposed an effective date of September 1, 1992 for the proposed requirements.

The agency received a number of comments on the leadtime issue. Chrysler, Nissan, and Volkswagen of America, Inc. supported the proposed leadtime. GM suggested a phase-in starting September 1, 1993. Under the suggested phase-in, 25 percent of each manufacturer's vehicles would be required to meet the requirements the first year, 40 percent the year beginning September 1, 1994, and all vehicles would be required to meet the requirements by September 1, 1995. MVMA and Ford also supported a phase-in starting September 1, 1993. These commenters stated that a phase-in would allow manufacturers to make orderly engineering changes as part of their new product development program and to make the best use of resources. Ford asserted that earlier implementation of the rule without a phase-in provision would place undue hardship and cost on vehicle manufacturers. NTEA stated that, if NHTSA extended the side door strength requirements to LTV's which are produced in two or more stages, multi-stage manufacturers should be granted at least six months additional leadtime than that provided to manufacturers of incomplete vehicles. NTEA asserted that a final-stage manufacturer does not know what limitations may be placed on a chassis by an incomplete vehicle manufacturer for pass-through certification and what modifications may be necessary to meet the safety standard until the new chassis is introduced and the incomplete vehicle manufacturer's guidelines for completing the vehicle are published. NTEA pointed out that its members have no current experience in this area.

After considering these comments and other information, NHTSA has decided to make the new requirements effective on September 1, 1993. NHTSA has concluded that manufacturers need this time period to equip all LTV's with side door beams as standard equipment after the necessary design, tooling, and testing. In addition, final-stage manufacturers need this much time to decide how to certify compliance with the requirements. Therefore, for good cause shown, NHTSA finds that it is in the public interest to have an effective date later than one year after promulgation of this rule.

NHTSA does not believe that additional leadtime or a phase-in is necessary. Door beam technology has been used with passenger cars since 1973. Further, a few LTV's are currently manufactured with side door beams. While Ford initially asserted that the installation of side door beams in one of its models would require major design changes, Ford has since developed a beam design which can be installed in the door of the specific model without a major design change.

Chrysler and Mercedes suggested that NHTSA delay extension of the quasi-static test of side door strength until the dynamic side impact test for LTV's is developed. NHTSA has decided to adopt the quasi-static test of side door strength now, rather than wait for the dynamic test to be developed. NHTSA believes that the benefits of the side door beam, which NHTSA expects manufacturers to use to comply with the side-door strength requirements, will avoid many fatalities and serious injuries. Thus, NHTSA does not believe that it is appropriate to delay the

implementation of the quasi-static performance requirement until the dynamic requirements are developed. In addition, NHTSA anticipates that the quasi-static and dynamic performance requirements for LTV's will be complementary, as they are for passenger cars.

Regulatory Impacts

A. Executive Order 12291

NHTSA has examined the impact of this rulemaking action and determined that it is major within the meaning of Executive Order 12291, and significant with the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Final Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. The analysis is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

This final rule will result in increased structure (i.e., side door beams) being added to the interior of side doors of LTV's. Doors are generally manufactured by the major motor vehicle manufacturers, which are not small businesses. In some instances, the production of LTV doors could be contracted out to other metal stamping and fabrication businesses. In such a case, the metal stamping or fabrication business, which may be a small business, would have the additional task of having to add an additional part to the door.

Other small businesses that might be affected include final-stage manufacturers and alterers. However, as discussed above, NHTSA anticipates that the impact will not be significant. Truck or van chassis purchased by final-stage manufacturers generally have side doors, which are not changed by the final-stage manufacturer. Therefore, certification with the side door strength requirements can easily be based on the original manufacturer's certification. If a final-stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid this by not installing a seat (or hardware for a seat) adjacent to the door.

A small number of final-stage manufacturers build their own vehicle body structures, which include side doors. These manufacturers, including some manufacturers of motor homes, are generally larger than most final-stage manufacturers and have greater engineering and testing expertise. The agency does not believe that the requirements will have a significant impact on these manufacturers. Also, walk-in vans, where new side doors are often fabricated, are excluded from the side door strength requirements.

NHTSA acknowledges that the final rule may limit the flexibility of van conversion companies, many of which are small businesses. If a van is not equipped with a side door beam for the rear side door, the van conversion company would have two choices. It could either choose not to install a seat (or the hardware for a seat) within ten inches of the door or choose to install a side-door beam and certify the van as complying with Standard No. 214. NHTSA recognizes that the cost of installing a side door beam and certifying the vehicles as complying with the standard may discourage van converters from using some current seat configurations in van conversions. However, NHTSA believes that there is an important safety benefit in not having a seating position adjacent to a door that does not meet the side door strength requirements of Standard No. 214. In addition, NHTSA believes that van manufacturers may respond to a market demand for popular seat configurations by installing a side door beam for the rear side door, thus giving van converters more flexibility. NHTSA believes that van manufacturers have a strong incentive to provide such vans.

Small organizations and governmental units should not be significantly affected. The potential cost impacts associated with this action should only slightly affect the purchase of new motor vehicles.

C. Environmental Effects

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The addition of side door beams to LTV's would result in increased material usage by manufacturers. There could also be increased material usage associated with possible secondary weight. NHTSA estimates that the approximately 60,000 tons of steel a year would be needed for side door beams in LTV's. The added vehicle weight associated with this final rule could reduce measured fuel economy by about 0.10 miles per gallon. Such a reduction in fuel economy would result in a slight increase in gasoline consumption. After considering the potential impacts of this final rule, NHTSA has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Impact on Federalism

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

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

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

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.214 [Amended]

2. S2 is revised to read as follows:

S2. Applicability. This standard applies to passenger cars. Effective September 1, 1993, sections S3(a), S3(e), S3.1 through S3.2.3, and S4 of the standard apply to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less, except for walk-in vans.

3. A new section 2.1 is added as follows:

S2.1 Definitions. Walk-in van means a van in which a person can enter the occupant compartment in an upright position.

4. S3 is revised to read as follows:

S3. Requirements. (a) Except as provided in section S3(e), each vehicle shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

(b) When tested under the conditions of S6, each pasenger car manufactured on or after September 1, 1996 shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(c) Except as provided in paragraph (d) of this section, from September 1, 1993 to August 31, 1996, a specified percentage of each manufacturer's yearly passenger car production, as set forth in S8, shall, when tested under the conditions of S6, meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(d) A manufacturer may, at its option, comply with the requirements of this paragraph instead of paragraph (c) of this section. When tested under the conditions of S6, each passenger car manufactured from September 1, 1994 to August 31, 1996 shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the Part 572, Subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(e) A vehicle need not meet the requirements of sections S3.1 or S3.2 for—

(1) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a manikin placed in any seat, with the seat adjusted to any position and the seat back adjusted as specified in Section S6.4, falls within the transverse, horizontal projection of the door's opening,

(2) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a manikin placed in any seat recommended by the manufacturer for installation in a location for which seat anchorage hardware is provided, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal projection of the door's opening,

(3) Any side door located so that a portion of a seat, with the seat adjusted to any position and the seat back adjusted as specified in section S6.4, falls within the transverse, horizontal protection of the door's opening, but a longitudinal vertical plane tangent to the outboard side of the seat cushion is more than 10 inches from the innermost point on the inside surface of the door at a height between the H-point and shoulder reference point (as shown in figure 1 of the Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front edge of the cushion with the seat adjusted to its forwardmost position and the rear edge of the cushion with the seat adjusted to its rearmost position.

(4) Any side door that is designed to be easily attached to or removed (e.g., using simple hand tools such as pliers and/or a screw driver) from a motor vehicle manufactured for operation without doors.

5. S3.2 is revised to read as follows:

S3.2 With seats installed in the vehicle, and located in any horizontal or vertical position to which they can be adjusted and at any seat back angle to which they can be adjusted, each vehicle must be able to meet the requirements of S3.2.1 through S3.2.3.

* * * * *

Issued on June 10, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–14182 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–59

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB39

Endangered and Threatened Wildlife and Plants; Final Rule to Amend Special Rule Allowing Regulated Taking of the Utah Prairie Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby amends the special regulation that allowed a maximum of 5,000 nuisance Utah prairie dogs (*Cynomys parvidens*) to be taken annually in two valleys in Utah under permits issued by the Utah Division of Wildlife Resources. The amendment expands the area of take to include all private land within the species' range and raises the maximum allowable take to 6,000 animals annually. In addition, the rule's quarterly reporting requirement will be replaced by greater reliance on the State's annual section 6 report on the Utah prairie dog and a requirement to make the State's records on permitted take available to the Service on request. All other provisions of the special regulation not relating to these amendments will remain unchanged.

EFFECTIVE DATE: June 14, 1991.

ADDRESSES: The complete file for this rule will be available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah State Office, 2078 Administration Building, 1745 West 1700 South, Lake City, Utah 84104–5110.

FOR FURTHER INFORMATION CONTACT: W. Robert Benton at the above address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

The Utah prairie dog (*Cynomys parvidens*) was listed as an endangered species on June 4, 1973 (38 FR 14678), pursuant to the Endangered Species Conservation Act of 1969. On November 5, 1979, the Utah Division of Wildlife Resources (Division) petitioned the U.S. Fish and Wildlife Service (Service) to remove the Utah prairie dog from the List of Endangered and Threatened Wildlife. The Service found that this petition contained substantial data and the species was reclassified from endangered to threatened on May 29, 1984 (49 FR 22330). A special regulation that allowed the regulated take of up to 5,000 animals annually was issued also.

The Utah prairie dog is a burrowing rodent in the squirrel family (Sciuridae) that occurs only in southwestern Utah. It is a member of the white-tailed prairie dog group which once inhabited vast areas of the western Great Plains. The Utah prairie dog is the most restricted of the three members of this group. Its total numbers were estimated to be about 95,000 in the 1920's (Collier and Spillett 1973), declining to a 1976 spring count of 2,160 adult animals (Coffeen 1986). This decline was caused by human-related habitat alteration and by poisoning, which resulted from the belief that prairie dogs compete with domestic livestock for forage. At present, the Utah prairie dog is still threatened over much of its range by loss of habitat. In addition, the damage caused by local concentrations of prairie dogs has provoked farmers in some areas to kill them illegally to protect crops and cropland.

Despite the above problems, overall numbers increased during the period 1976–1989. The 1989 spring count of 7,377 was more than triple the 1976 low of 2,160 (Coffeen 1989); though the summer population (which is the source of the nuisance animal problem) was estimated to increase to approximately 33,700 animals in 1989.

Due to budget and personnel constraints, the 1990 spring count censused colonies on public lands only; these colonies accounted for one-third of the total population in 1989. In 1990, Utah prairie dog numbers on public lands declined 61 percent from 1989 levels (Coffeen 1990). Three of the largest prairie dog colonies on public land had increased to unusually high population levels in 1989, achieving densities that place them at greater risk for disease outbreaks. It is likely that these colonies crashed due to disease. Though serious, the 1990 decline in Utah prairie dog colonies on public lands should not be considered cause for alarm. The species' high rate of reproduction and its susceptibility to diseases such as plague can cause populations to fluctuate considerably from year to year. A number of large colonies that were showing very low populations are expected to start to increase in the next 2 years as the disease cycle declines (Coffeen 1990).

There are no census data or reasonable bases for estimating Utah prairie dog numbers on private lands in 1990. Since the 1990 census data are incomplete, this rulemaking will rely on prior years' census data in discussing population numbers and trends. The spring count was conducted in 1991, and the Division has assured the Service that the full complement of spring counts will be reinstated, henceforth (Timothy Provan, Director, *in litt.*, 1991).

It is important to note that the spring census does not tally the entire adult population; it counts only observed adult animals that have successfully survived the winter. Recent spring counts have been conducted using a dog to "tease" prairie dogs from their burrows. Based on a quick field comparison between census results using the current "canine tease" method and optical methods used previously, it is believed that between 70 to 90 percent of the actual adult population is counted in the spring census using the canine tease (Coffeen 1986; 1987; 1989; pers. comm., 1991). Assuming 80 percent of the population was counted in the 1989 spring census, then the actual 1989 adult spring population would be over 9,200 animals.

The nuisance prairie dog problem results from the species' high rate of reproduction. Wright-Smith (1978) found that litter size varied from 1 to 6 pups per litter, with a mean of 3.9; Pizzimenti and Collier (1975) reported that captive female Utah prairie dogs give birth to an average of 4.8 young in April. Wright-Smith (1978) found that there were twice as many adult females as males at her Utah prairie dog study sites. Elmore *et al.* (1976) noted that each territory contained approximately one adult male and three adult females. Use of the lower sex ratio and litter size estimates will provide a conservative estimate of the population increase following spring breeding. Therefore, assuming that two-thirds of the adult population is female and that each female produces an average litter of 4 young, then the total population increased by a factor of 3.7 to approximately 33,700 animals in 1989 following spring breeding.

In the summer, there is a population explosion of Utah prairie dogs above ground as the young of the year emerge from burrows and disperse, creating serious conflict between the Utah prairie dog and human agricultural interests. The major crop on private land is alfalfa, which is a preferred food of the prairie dog. Colony expansion is greatest when alfalfa or other cool season, palatable forage is available. Crop losses are extensive where large prairie dog colonies and complexes have developed. Prairie dog mounds damage haying equipment and the burrows drain irrigated fields. It was estimated in 1984 that the large summer populations of these prairie dogs cost local ranchers $1.5 million annually in crop losses and damage to equipment (Ivan Matheson, former Utah State Senator, pers. comm., 1984).

The Division believes that ranchers in the area will not tolerate such losses (Michael Coffeen, Regional Nongame Manager, Utah Division of Wildlife Resources, pers. comm., 1988). As prairie dog populations expand into previously unoccupied areas that include agricultural fields, some fields have become so densely populated that they are ruined for agricultural use. In addition, extremely high population levels also increase the probability of epizootics, which could devastate major Utah prairie dog colonies. It is believed that the extremely high population numbers at the large Minersville #3 colony made it susceptible to plague (especially because disease-carrying predators could move freely in and out of this site), causing the recent crash of this colony.

In an effort to mitigate overpopulation problems on private land and to establish new colonies on public land, the Division implemented a transplant program which has transplanted over 15,200 prairie dogs to public lands since 1972 (Coffeen 1990). About 49 percent of all Utah prairie dog colonies occurred on private land in 1989, down from a high of 87 percent in 1981 (Coffeen 1989). While the transplant program has proven to be successful, particularly after transplantation techniques were refined, this labor-intensive program never has been able to keep pace with the growing prairie dog populations on private land.

Because the transplant program could not handle the overpopulation problem, a controlled take program was needed. Adult prairie dogs cease surface activity in late August and September, but young animals continue surface activity and feeding until as late as December at lower elevations. These juveniles, which are the source of the nuisance animal problem, experience high natural mortality over the fall and winter. This high overwinter mortality is typical for small rodents with high reproductive rates.

Given the high natural mortality of Utah prairie dogs in the fall and winter, it appeared that allowing controlled take of nuisance animals between June 1 and December 31 would address farmers' needs to control nuisance animals without interfering with conservation efforts. In essence, farmers would be allowed to take animals that probably would have perished anyway.

In addition, controlled take was seen to provide positive benefits, on a population level, to the Utah prairie dog. The large number of juvenile Utah prairie dogs added each summer strains the carrying capacity of available habitat in a few areas. Cultivated fields provide artificially high levels of food, promoting unnaturally high population levels and densities. Higher population densities increase prairie dog-to-prairie dog contact, which increases the probability of disease transmission. With high population densities, and as colonies spread and tend to become continuous, there is a greater danger from the outbreak of disease such as sylvatic plague (*Pasteurella pestis*). Such populations can be completely eliminated by epizootics (Collier and Spillett 1972). By keeping population booms to more moderate levels, the control program could stabilize prairie dog populations on private land, enabling a slow steady growth in numbers instead of the boom and bust cycles associated with outbreaks of disease.

So, as part of the reclassification from endangered to threatened in 1984, the problem of nuisance animals was

addressed by developing a special rule to allow the take of Utah prairie dogs in Cedar and Parowan Valleys, Iron County, Utah, under a permit system developed by the Division. These valleys were the only ones in which overpopulation and nuisance animal problems were reported at the time. The maximum number of Utah priarie dogs that could be taken annually was limited to 5,000 animals, which was less than the expected overwinter mortality, and take was confined to the period between June 1 to December 31.

The field activities of the control program are exclusively administered by Division personnel. Under the control program, an applicant for a permit is required to sign an application form stating that he/she understands the provisions of the Utah Prairie Dog Proclamation. Division personnel then conduct a visual census of the applicant's problem area and issue a control permit only for the number of Utah prairie dogs actually causing damage. Permits allow controlled shooting and trapping. Taking cannot include the use of chemical toxicants, because no such materials are registered for control of the species. At the end of the 30-day permit period, the permittee is required to return a report form indicating the number of animals taken, the method of take, and the method of disposal (Jacquart and Coffeen 1987).

Under the current special rule, the State is required to report take to the Service's Regional Office in Denver, Colorado, every 90 days, specifically: Name and address of each person holding an active permit; reason for issuance of each permit; number, location, and method of take of all Utah prairie dogs taken during the reporting period; and any other information requested by the Service. If the Service were to receive substantial information that these takings were having an effect inconsistent with the conservation of the Utah prairies dog in the area of take, the Service could immediately prohibit or restrict such taking, as appropriate, for the conservation of the population. Such prohibitions or restrictions have not yet proved to be necessary, as explained below.

An analysis of the spring census population data for the two valleys in the control program reveals a general growth trend for the period 1985–1989.

Note: Spring censuses were not performed in this area in 1990.

These data demonstrate that Utah prairie dog population levels in the area of controlled take increased 88 percent during the first 4 years (1985–1989) of controlled take (Coffeen 1989). In the first year of the control program (1985), the spring count was 2,113 animals. Later that year, 426 prairie dogs were taken legally (Coffeen 1990). The following year (1986), the spring count was 3,012 animals, or an increase of 43 percent. Later, in 1986, 1,247 animals were reported taken by permit holders. The next year's (1987) spring count was 2,220 animals, or a dcrease of 26 percent. In 1987, only 370 animals were taken. The spring count increased 65 percent to 3,660 animals in 1988. In 1988, 528 animals were taken, and the next year's spring count showed an increase of 8 percent to 3,969 animals in 1989. In 1989, 638 animals were taken, and in 1990, 1,267 animals were reported taken on private lands in the area of regulated take.

The control program has successfully addressed the Utah prairie dog overpopulation problem in Cedar and Parowan Valleys. It allowed more stable growth of prairie dog colonies on private land, possibly reducing the chance of plague outbreaks. It provided private landowners a means to alleviate localized problems with nuisance Utah prairie dogs on their land in a manner that does not undermine conservation efforts. The control program also improved cooperation between farmers and conservation agencies and reduced the incentive for landowners to kill prairie dogs illegally. The incidence of illegal take of Utah prairie dogs dropped singificantly in the control area in 1984–1989, based on State law enforcement records (Michael Coffeen, pers. comm., 1989).

However, the general increase in prairie dog numbers resulted in an expansion of colonies into formerly uninhabited areas. For example, spring counts in the Panguitch area, Garfield County, Utah, went from 444 prairie dogs in 1984 to 905 prairie dogs in 1989, an increase of 104 percent in 4 years (Coffeen 1989). The story was similar for the Loa area, Wayne County, Utah. The spring count in that area increased 77 percent, from 60 animals in 1984 to 106 animals in 1989. Now private landowners outside of the Cedar and Parowan Valleys are requesting permits to take Utah prairie dogs on their land.

The nuisance animal problem outside the original area of controlled take has become acute and is indicative of overpopulation pressures that must be addressed. Failure to address this problem could result in devastating disease outbreaks and/or widespread illegal poisoning by frustrated farmers. Combined, these threats could decimate populations on private land and reverse the progress made since 1976.

Therefore, the Service has amended the special rule to include all private land throughout the range of the Utah prairie dog. In addition, the maximum number of prairie dogs allowed to be taken has been raised to 6,000 animals to accommodate the increase in the control area. To put this into perspective, the amendment to the special rule will allow a 20 percent increase in the maximum number of animals allowed to be legally taken, after the population on private land increased 61 percent from 1985–1989.

Finally, the rule will eliminate the quarterly reporting requirement. Instead, the Service will: (a) Rely on the State's annual reports to monitor the degree of take; and (b) have access to the State of Utah's detailed records on permitted take if take seems excessive or population declines occur. In addition, the Service and the Division will continue to coordinate informally.

Annual reports on the number of permits issued, number of animals allowed to be taken, and number of animals actually taken by permittees have been submitted to the Service since 1985 by the State of Utah under its Grant Agreement with the Service under Section 6 of the Endangered Species Act. These data also are reported by the State's representative to the Ad Hoc Utah Prairie Dog Recovery Team, on which the Service participates, at the Team's annual meeting.

Under its control program, the State maintains the following information on permittees: Name and address of permittee; permit number; numbers of Utah prairie dogs allowed to be taken and actually taken; and location, method of take, and method of disposal of all Utah prairie dogs taken. A summary on permitted take is prepared each year by the State.

The Service considers the annual reports, supplemented with Service access to the State's detailed records on take, to be preferable to the quarterly reports for formal monitoring purposes because: (a) Quarterly report preparation cannot be justified when population surveys are conducted only once a year, i.e., frequent formal reports on permitted take will not improve Sevice oversight of the State's control program if the program's possible impacts on prairie dog populations are known only by the spring of the following year; and (b) the quarterly reports include details on take that are not immediately useful (e.g., name and address of each person holding an active permit, reason for issuance of each permit, and location and method of take for all prairie dogs taken). It will

suffice if the State maintains this information in its files and makes it available to the Service in the event a population decline calls into question the level of take permitted by the control program. Overall, amending the reporting requirement will not reduce the Service's oversight capability.

State and Service biologists with responsibility for monitoring the status of the Utah prairie dog maintain regular informal contact. At least twice a month during the time the species is above ground, these biologists discuss censusing, controlled take, transplantation, and other topics relevant to species status. Therefore, any unusual event (e.g., an increase in the number of permits requested) or possible change in species' status (e.g., a population decline detected during the spring count) would be brought to the Service's attention in a timely manner.

This amendment is considered necessary and advisable for the conservation of the Utah prairie dog. The nuisance prairie dog problems that have arisen on private lands not included in the original control program indicate overpopulation pressures. If allowed to proceed unchecked, Utah prairie dog colonies on private lands would achieve unnaturally high densities that provide greater opportunities for the transmission of disease. If colonies have spread so as to become nearly continuous, disease could spread throughout major portions of the species' range, causing devastating declines. By allowing additional private landowners to remove biologically expendable nuisance animals under controlled conditions, the rule change will stabilize populations of prairie dogs on all occupied private land so that carrying capacity is not exceeded, and decrease the vulnerability of the species to outbreaks of sylvatic plague. The rule change also will reduce the incidence of illegal killing and decrease landowner opposition to species recovery. Finally, this amendment is expected to improve future cooperation between wildlife management agencies and private landowners in managing for the Utah prairie dog.

Summary of Comments and Recommendations

In the February 21, 1990, proposed rule, all interested parties were requested to submit comments or suggestions so that any final action resulting from the proposal would be based on the most current information available. Approximately 120 State and Federal agencies, county governments, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following Utah newspapers: *Standard-Examiner*, Ogden, on February 24, 1990; the *Daily Herald*, Provo, on February 26, 1990; the *Salt Lake Tribune* and *Deseret News*, Salt Lake City, on February 27, 1990; the *Daily Spectrum*, St. George, on February 27, 1990; *The Richfield Reaper*, Richfield, on February 28, 1990; and the *Carfield County News*, Panguitch, and *Beaver County News*, Milford, on March 1, 1990. Comments received are discussed below.

Twelve comment letters were received, including one from a Federal agency, one from a State agency, five from county governments or associations, two from private organizations, and three from individuals. Nine respondents supported the amendment and one opposed it. The following major issues emerged:

Issue 1—Take limit: Eight respondents recommended that the maximum number of Utah prairie dogs that could be taken each year should be increased. Their rationale was that if the take area was increased to encompass the species' entire range (private lands only), then an increase in the take limit was justifiable. The Service agrees, and has increased the maximum level of allowable take from 5,000 to 6,000 animals per year. This is a 20 percent increase, and is conservative considering the population on private lands has increased 61 percent from 1985 to 1989. The Service will retain the authority to prohibit or restrict take if there is substantive evidence it is having an effect inconsistent with the conservation of the Utah prairie dog.

One respondent suggested that nuisance prairie dogs should be harvested as necessary. The Service does not agree with this, since uncontolled take of nuisance Utah prairie dogs could jeopardize the species' survival and recovery.

One respondent opposed the current maximum level of take. To this person, it appeared that nearly all of the population could be removed if the take ceiling of 5,000 was reached, referring to the preliminary 1989 spring count of 6,400 animals as the basis for this conclusion. The Service wishes to clarify that this is not an accurate comparison. The time period for controlled take commences in the summer, after the adult animals counted in the spring have had litters. The species' population increases by a factor of 3.7 in the spring, assuming there are two adult females per adult male and that each female has a litter of four. Nearly all of this population increase would be lost from natural mortality over the fall and winter. By the following spring, the number of surviving prairie dogs would not be much different from the previous year's spring count. Even if an excessive number of animals were to be taken in any year, the Service could prohibit or restrict take the following year to compensate.

In addition, as explained earlier, uncontrolled population growth could lead to precipitous declines in Utah priarie dog colonies on private land. It is an epidemiological principle that the greater the population density of prairie dogs, the greater opportunity there is for tranmission of disease (pers. comm., Dr. Allan Barnes, Chief, Plague Section, Center for Infectious Diseases, 1990). There is evidence from Utah prairie dog colonies on public land to support this connection. For example, the largest Utah prairie dog colony on public land (Minersville #3) increased from a spring count of 68 animals in 1985 to 627 animals in 1989 (Coffeen 1989). In 1990, the population plummeted to 10 animals, with disease being the most likely cause. A similar population crash occurred a decade ago, in the Parker Top-Pollywog Lake colony, which achieved its highest spring count of 324 animals in 1979, and dropped down to 14 animals in 1980.

The original special rule, published in the **Federal Register** in 1984, clearly explained that regulated taking relieved population pressures that were potentially detrimental to the species as well as economically damaging to farmers. The 1990 proposal to amend the special rule did not provide as much background explanation, which may have led to the concern expressed by this respondent as to whether the amendment was in the best interest of the species. To clarify this point, the Service has added additional text to the "Background" section of the rulemaking to make clear the positive effect that regulated take can have in relieving overpopulation pressures that cause the nuisance animal problem and that can lead to devastating disease outbreaks.

Issue 2—Area of take: One respondent opposed increasing the area of take. As explained above, regulated take in areas of overpopulation can have a prophylactic effect by decreasing the possibility of disease outbreaks. In addition, the Service believes that if the area of controlled take is not increased, then uncontrolled illegal take of Utah prairie dogs will increase as farmers outside the original control area attempt to protect their private property from the damage caused by nuisance prairie

dogs. In fact, an increase in illegal take was reported by the Division in 1990 outside the original control area as the nuisance animal problem expanded outward.

Issue 3—Period of take: Two respondents recommended that the period of take begin several months earlier (i.e., February 15 or March 1) so that animals could be taken before crops mature. Setting earlier dates for control would increase the number of adult breeding animals taken. Through this would be a more effective control strategy from the farmers' standpoint, it could be extremely detrimental to species recovery. The Service believes that the current time period for control strikes a balance between reducing conflicts and conserving the species.

Issue 4—Method of control: Three respondents supported transplantation as a method for addressing the nuisance Utah prairie dog problem. Two respondents recommended that transplanted prairie dogs be placed on public lands, and one respondent recommended both sexes be transplanted. Transplantation is being done already. The Division has transplanted over 15,200 prairie dogs from private to public lands since 1972, with priority given to nuisance prairie dogs. However, due to budget limitations, the transplant program has not been able to keep pace with growing prairie dog numbers. The Division has been transplanting both sexes: males are introduced to transplant areas first to establish new colonies, with females introduced later on. When sufficient numbers of Utah prairie dogs are established on public lands, the species will be considered for removal from the List of Threatened and Endangered Wildlife.

The Division commented on the methods of take allowed. Regulations promulgated by the State of Utah do not allow drowning because it is considered an inhumane form of wildlife control. Trapping and shooting are the only legal means to take Utah prairie dogs under State regulation. The "Background" section of this rulemaking was changed to reflect this, but since the special rule does not specify allowable methods of take, no change to the special rule is necessary.

One private landowner suggested that an adopt-a-pet program be developed, similar to the Bureau of Land Management program for wild horses. The Service feels that such a program would not be in the species' best interest. If a Utah prairie dog was live-trapped, it would be better to transplant it to public lands than place it in captivity as a pet.

Issue 5—Reporting frequency: One respondent opposed the elimination of the quarterly reporting system, suggesting that reliance on a yearly report would not provide timely information on population status that would allow mid-year corrections to the control program to avoid detriment to the species. The rationale for the change in reporting frequency was discussed under "Background." The State already reports on the number of permits issued, the number of animals allowed to be taken, and the number of animals taken in its annual Section 6 reports to the Service. In addition, the Service does not rely solely on the annual report to be kept apprised of the species' status. The Service and the Division have a close working relationship. Any major changes, problems, or concerns with Utah prairie dog management, including an unusual demand for take permits, would be brought to the Service's attention promptly. In many respects, the annual report summarizes information that already has been communicated to the Service during the year. Hence, the change to an annual report is unlikely to compromise Service oversight of species' management by the Division.

Issue 6—Reimbursement for damages to private property: Three respondents suggested that private landowners should be compensated for damages resulting from nuisance Utah prairie dogs. The Service feels that this is not necessary. This regulatory amendment will allow private landowners to legally take nuisance animals before significant damage occurs.

Effective Date

Because of the need to provide immediate relief to farmers whose property is being damaged by nuisance Utah prairie dogs, the Service finds good cause to make this final rulemaking effective upon publication in the Federal Register in accordance with 5 U.S.C. 553(d)(3).

Environmental Analysis

Comments received during the public comment period were used to develop the final rule and provide further input for environmental impact analysis. Section 7 consultation was conducted on the rule and concluded that the amendment was not likely to jeopardize the continued existence of the species. A final environmental assessment evaluating the impacts of the rule also was completed and a Finding of No Significant Impact was made. These documents are available and may be obtained by contacting the State Supervisor (see **ADDRESSES** above).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that this amendment to the Utah prairie dog special rule will not constitute a major action under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule contains no information collection or record keeping requirements, as defined under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

References Cited

Coffeen, M.P. 1986. Utah prairie dog (*Cynomys parvidens*) recovery and management. Unpublished report, Utah Division of Wildlife Resources, Section 6 progress report, Project SE-1, Job U-06. 4 pp.

Coffeen, M.P. 1987. Utah prairie dog (*Cynomys parvidens*) recovery and management. Unpublished report, Utah Division of Wildlife Resources, Section 6 progress report, Project SE-1, Job U-06. 6 pp.

Coffeen, M.P. 1989. Utah prairie dog (*Cynomys parvidens*) recovery and management. Unpublished report, Utah Division of Wildlife Resources, interim Section 6 progress report, Projects SE-1-8, Job M-1. 9 pp.

Coffeen, M.P. 1990. Utah prairie dog (*Cynomys parvidens*) recovery and management. Unpublished report, Utah Division of Wildlife Resources, Section 6 progress report, Project SE-1, Job U-06. 15 pp.

Collier, G.D., and J.J. Spillett. 1972. Status of the Utah prairie dog. Utah Academy Proceedings 49:27-39.

Collier, G.D., and J.J. Spillett. 1973. The Utah prairie dog—Decline of a legend. Utah Science 34:83-87.

Elmore, S., G.W. Workman, C. Budge, and G.E. Neusaenger. 1976. A baseline study of the past and present status of the Utah prairie dog (*Cynomys parvidens*) in Bryce Canyon National Park. Final report, Project Number 245 2761 0707 02519. National Park Service. 40 pp.

Jacquart, H., and M.P. Coffeen. 1987. Utah prairie dog (*Cynomys parvidens*)—Control program expansion to include population areas of Panguitch & Loa, Utah. Unpublished report, Utah Division of Wildlife Resources. 8 pp.

Pizzimenti, J.J., and G.D. Collier. 1975. *Cynomys parvidens*. Mammalian Species 52:1-3.

Wright-Smith, M.A. 1978. The ecology and social organization of *Cynomys parvidens* (Utah prairie dog) in south central Utah. Masters thesis. Indiana University, Bloomington. 44 pp.

Author

The primary author of this rule is W. Robert Benton, Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** above). Assistance was

provided by Nancy Chu, U.S. Fish and Wildlife Service, Denver Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.40 by revising paragraph (g) to read as follows:

§ 17.40 Special Rules—Mammals.

* * * * *

(g) Utah prairie dog (*Cynomys parvidens*). (1) Except as noted in paragraph (g)(2) of this section, all prohibitions of 50 CFR 17.31 (a) and (b), and exemptions of 50 CFR 17.32 shall apply to the Utah prairie dog.

(2) A Utah prairie dog may be taken on private land throughout its range under a permit issued by the Utah Division of Wildlife Resources, in accordance with the laws of the State of Utah, provided that such taking does not exceed 6,000 animals annually and that such taking is confined to the period from June 1 to December 31. Records on permitted take maintained by the State shall be made available to the U.S. Fish and Wildlife Service on request.

(3) If the Service receives substantive evidence that takings pursuant to paragraph (g)(2) of this section are having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such taking as appropriate for the conservation of the species.

* * * * *

Dated: May 17, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–14179 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 18

RIN 1018–AB48

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is issuing a final rulemaking that will allow for the next 5 years the incidental, but not intentional, take of small numbers of walruses and polar bears during open water exploration for oil and gas in the Chukchi Sea adjacent to the coast of Alaska.

Under provisions of the Marine Mammal Protection Act of 1972, as amended (Act), the taking of these marine mammals may be allowed only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 year period will have a negligible impact on the species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If these findings are made, the Service is required to establish specific regulations for the activity that set forth: (1) Permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

This rulemaking does not authorize the actual activities associated with exploration, but rather allows a take of walruses and polar bears incidental to exploration. The Department of the Interior's Minerals Management Service (MMS) is responsible for permitting activities associated with oil and gas exploration.

DATES: This rule will be effective for 5 years beginning June 14, 1991, except that § 18.118(a)(2) will become effective November 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan or Jon Nickles, Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, suite 310, Anchorage, AK 99508, 907–561–1239.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Act gives the Secretary of the Interior (Secretary) authority to allow, on request by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals. Permission may be granted for a period of 5 years or less.

The taking of marine mammals may be allowed only if the Service finds, based on the best scientific evidence available, that the taking will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. Also, regulations must be published that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. After final regulations are established, Letters of Authorization (LOA) may be issued to individual applicants to conduct activities pursuant to the regulations.

As a result of 1986 amendments to the Act, the Service on September 29, 1989, published a final rule (54 FR 40338) amending 50 CFR 18.27 (i.e., Regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definiton of "negligible impact" and a new definition for "unmitigable adverse impact." Negligible impact is now defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." 50 CFR 18.27(c). "Unmitigable adverse impact means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met." *Id.*

A Proposed Rule that would allow an incidental take of marine mammals was published by the Service on February 25, 1991, (56 FR 7645), with a comment period that ended April 11, 1991. Public meetings were held in Anchorage, Alaska, on March 4, 1991; Barrow, Alaska, on March 12, 1991; Wainwright, Alaska, on March 13, 1991; Point Lay, Alaska, on March 14, 1991; and Point Hope, Alaska, on March 19, 1991.

Approximately 85 persons attended the public meetings and 16 entities, including conservation groups, Federal, State and local government agencies, private industry, Native organizations and other interested parties commented on the proposed rule. These comments are summarized along with responses in the discussions below. The Service prepared an Environmental Assessment on this action and found that there would be no significant impact on populations of walruses and polar bears, and there would be no unmitigable adverse impacts on the availability of these species for subsistence by Alaska Natives. A Finding of No Significant Impact (FONSI) has been made on the Environmental Assessment which accompanies the document. A copy of the Environmental Assessment and FONSI are available on request from the persons listed above in the section entitled, **"FOR FURTHER INFORMATION CONTACT."**

Summary of Request

On March 30, 1990, the Service received a request from Shell Western E & P Inc. (SWEPI) seeking promulgation of regulations to allow the incidental take of small numbers of Pacific walrus (*Odobenus rosmarus divergens*) and polar bear (*Ursus maritimus*) during oil and gas exploratory activities in Alaska State waters and on the Outer Continental Shelf (OCS) during the open water season in the Chukchi Sea adjacent to the coast of Alaska over the next 5 years. The open water season is defined as that period when sea ice does not cover the Chukchi Sea. Sea ice begins forming over the northern portion of the Chukchi Sea by late September or early October. By early November, the southern extent of the sea ice has usually covered the Chukchi Sea and entered the Bering Sea (Webster 1981, 1982 in LaBelle et al. 1983). The open water season, which is assumed for purposes of analysis to be represented by a 90-day drilling or operating period (USDI 1990), usually occurs between June 15 and October 15. Although it is referred to as an open water season, broken pack ice exists within the open water zone. This ice is moving, floating ice which is dynamic due to wind and currents. The presence of floating ice requires ice management activities during the open water season.

SWEPI's request includes taking by incidental and unintentional harassment of marine mammals during pre-lease and post-lease exploration for oil and gas resources in Alaska State waters and on the OCS. The Act defines "take" as harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Implementing regulations in 50 CFR part 18 further define take as "* * * to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal * * *" (50 CFR 18.3). The petition does not request promulgation of regulations for incidental taking from development or production activities. Activities likely to be conducted include geological and geophysical surveys, drilling of Continental Offshore Stratigraphic Test Wells, and exploratory drilling for oil and gas together with associated support activities. Potential sources for incidental taking would include noise, unpermitted discharge (oil spill), and physical obstruction.

SWEPI estimates that the number of encounters with walrus in a given year will probably not exceed 200. For the purposes of this petition, SWEPI suggests that 20 or less lethal takes of walruses could occur during the 5 year period of the regulations. SWEPI estimates that no more than 10–15 polar bears will be taken by incidental disturbance resulting from their operations during the 5 year term of the regulations. No polar bear fatalities are anticipated.

Excluded from the geographic and seasonal scope of the application is the area within the Chukchi Sea spring lead system when it is identifiably intact as a marine mammal migratory corridor (SWEPI Petition 1990). The lead system in the Chukchi Sea is located in the shear zone between the shorefast ice and offshore pack ice. Leads (linear open water areas) and polynyas (nonlinear open water areas) are formed when wind and currents direct the pack ice offshore. The Chukchi Polynya is a recurring polynya and associated lead system that appears in March and April, originating south of Point Hope. This polynya often provides the only open water habitat available in early spring before any major deterioration of the pack ice occurs. The petition states that SWEPI, at this time, does not intend to conduct any exploratory drilling or seismic operations within the spring lead system during the excluded period.

Summary of Final Rule

The Final Rule authorizes an incidental take of walruses and polar bears in the Chukchi Sea from 1991–1996 by individuals who are conducting pre-lease and post–lease oil and gas exploratory activities. Incidental take regulations will be in effect during the open water season which will be defined as that period from June 15 to November 30. Incidental taking is not allowed when walrus are concentrated in the spring lead system. Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system and will notify the exploration companies and the Native communities when it has made this determination. Depending on the variability of ice conditions, the start-up date may be after June 15.

The Final Rule includes requirements for monitoring and reporting, and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. All activities must be conducted in a manner that minimizes adverse effects on the species and their habitat.

Individuals who wish authorization for incidental take must apply separately for an LOA for each activity at least 90 days before the activity is to begin. The Final Rule requires those who request an LOA to submit a plan to monitor the effects on walruses and polar bears of the exploratory activities. The plan and the person or persons designated to observe and record the effects of exploration activities must be approved by the Service. Also, the applicants must submit a plan of cooperation with Alaska Natives that identifies what measures have been, and will be, taken to minimize any adverse impacts on the availability of marine mammals for subsistence uses. Each request will be evaluated on the specific activity and the specific location, and each authorization will identify allowable methods or conditions that are specific to that activity and location. A report on all exploration and monitoring activities must be submitted to the Service within 90 days after the completed activity. Notice of issuance of LOAs will be published in the **Federal Register**. As prescribed in 50 CFR 18.27(f), any substantive modifications of LOAs will be subject to public review unless the Service determines that an emergency exists which requires immediate action.

Note: The Service will defer until November 1, 1991, the requirement that an application for an LOA be filed at least 90 days before an activity is to begin. This portion of the Final Rule is being deferred because publication is expected to coincide with the beginning of the 1991 open-water exploration season.

To obtain authorization for an incidental take of walruses or polar bears each company conducting an exploratory activity in the Chukchi Sea must apply for an LOA for each geophysical survey or seismic activity and each drilling operation. The granting

of each LOA will be based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level used to make a finding of negligible impact and a finding of no unmitigable adverse impacts. The estimated level of activity is based on projections prepared by the MMS in environmental impact statements for lease sales 109 and 126 (USDI 1987, 1990b). If the level of activity is more than anticipated, such as more support vessels or aircraft, more drilling units, or more miles of geophysical surveys, the Service would reevaluate its findings to determine if they continue to be appropriate. The individual LOAs will include monitoring and reporting requirements that are specific to each activity, and any measures that are necessary for mitigating impacts to subsistence activities.

Description of Activity

The estimated level of activity was taken from environmental impact statements issued by the MMS in connection with OCS lease sales in the Chukchi Sea. In addition, SWEPI has supplied information on the kinds and the level of activities they expect to occur over the next five years. The Service has used this estimated level of activity as a basis for its findings. If requests for LOAs exceed the highest estimated level of activity, the Service would reevaluate its findings to determine if they continue to be appropriate before further LOAs are issued.

Activities that are covered in the request are geophysical surveys, exploratory drilling, and support activities. Geophysical surveys are divided into two classes: Deep seismic and shallow hazard. Both kinds of surveys use a "reflective" method to acquire data. Both include an energy source that generates a seismic signal, hydrophones that receive the signal, and electronic equipment on board a seismic vessel that amplifies and records the signal. Energy sources used in deep seismic surveys release bursts of compressed air or water. Sound sources in shallow hazard surveys operate at lower energy levels and generate less acoustic pressure than deep seismic surveys.

The four principal forms of exploratory drilling structures currently in use or under development for Arctic exploration are artificial islands, bottom-founded structures, drillships, and semi-submersible vessels.

The exploratory activities discussed in the petition are currently being conducted in Arctic waters. Seismic surveys have been conducted in the Chukchi Sea since the mid-1960s. Exploratory drilling has been conducted in the Chukchi Sea since 1989.

Marine seismic surveys operate only during the open-water season which is variable. In the southern Chukchi Sea, open water may occur between July and mid-November and in the northern Chukchi Sea, open water may occur between August and October. Seldom does the open-water period exceed 90 days. The scope of the petition is limited to "open-water" seismic surveys and does not include any on-ice survey activity near spring lead systems. Seismic surveys and exploratory drilling will continue for at least the next seven to ten years. They will occur on tracts already leased and those offered in future lease sales.

Over the next five years, pre-lease survey activity (deep seismic) will occur in unleased portions of the Chukchi Sea. Pre-lease surveys will likely be concentrated in the proposed sale areas during the open-water season. The MMS estimated the extent of shallow-hazard seismic surveys for Chukchi Lease Sale 109 at 7,979 trackline kilometers over the life of the lease period for Sale 109 (USDI 1987). An additional 8,783 trackline kilometers of 3–D and deep penetration seismic data have been estimated to occur after the initial exploratory drilling in the Lease Sale 109 area (USDI 1987). The estimate for shallow-hazard surveys for Chukchi Sea Lease Sale 126 was 7,055 trackline kilometers for the base case with an additional 10,329 trackline kilometers of 3–D and deep penetration surveys (USDI 1990b). Although the trackline kilometer estimates for Lease Sales 109 and 126 are not entirely independent, the amount of overlap is difficult to calculate. The estimated total of shallow-hazard surveys for the Chukchi Sea for the life of the leases is 15,034 trackline kilometers and that of 3–D and deep penetration is 19,112 trackline kilometers.

Before drilling can begin, lessees must file an Outer Continental Shelf Plan of Exploration and Environmental Report with the MMS as well as an Application for Permit to Drill. The MMS must approve the Plan of Exploration before exploration activities may begin. The Plan of Exploration is also reviewed by the State of Alaska for consistency with the Alaska Coastal Management Program under the provisions of the Coastal Zone Management Act.

In the Chukchi Sea, 350 blocks were leased as a result of OCS Lease Sale 109. To date, three exploratory wells have been completed and another one started. The Final Environmental Impact Statement for Lease Sale 109 estimates that 29 exploratory and 40 delineation wells will be drilled under the high-case assumption from 1991 through 1996, the period the incidental take regulations would be in effect. The mean case assumes 16 exploratory and 23 delineation wells over the same period. As few as two or as many as seven drilling units could be working in any given year in the Chukchi Sea. These estimates include both floating and bottom-founded drilling units. Sale 126, the next oil and gas lease sale for the Chukchi Sea OCS planning area, is scheduled for August 1991. The Draft Environmental Impact Statement for this lease sale estimates that under the high case 25 exploratory and 12 delineation wells will be drilled from 1992 through 1996 (USDI 1990b). The mean case assumes 23 exploratory and 11 delineation wells during the same period. The cumulative case for the arctic region, including lease sales from the Beaufort Sea, Chukchi Sea, and Hope Basin Planning Areas, assumes a total of 68 exploratory and delineation wells will be drilled in State and Federal waters in the Beaufort and Chukchi Seas.

An appropriate drilling unit will be selected by the lessees when an application for Permit to Drill is filed with the MMS or the State of Alaska. Although the level of support activities is speculative, supplies during the drilling season will be transported to the drill ships by helicopters and supply vessels. Bottom-founded units will be resupplied from barges. During 1991 through 1996, an estimated 24 drilling support barge trips will be made to Chukchi Sea drilling units associated with Sale 109. A proportionately similar number of barge trips would be expected during 1992 through 1996 for units drilling on tracts leased in Sale 126. It is estimated that one helicopter trip per drilling unit per day will be flown in support of exploratory drilling. One icebreaker and two ice-strengthened support/supply boats are estimated as needed to support each drilling unit, and supply boat trips are estimated at one per drilling unit per week. Depending on ice conditions, two or more icebreaking vessels may be required to perform ice management tasks for the floating units.

Biological Information

The geographic area covered by the request is the continental shelf of the Arctic Ocean adjacent to western Alaska. This area includes the waters and seabed of the Chukchi Sea, which encompasses all waters north of the

Bering Strait that are east of the U.S.-Russia Convention Line of 1867, west of a north-south line at Point Barrow, and within 200 miles to the north of Point Barrow. This delineation of the Chukchi Sea includes the western blocks of the Beaufort Sea Planning Area.

Walrus

The Pacific walrus subspecies winters in the Bering Sea and includes about 80 percent of the world walrus population. In the summer, walruses segregate by sex and age as females with calves and juveniles of both sexes migrate into the Chukchi Sea. Many of the adult males remain in the Bering Sea where they form large groups on terrestrial haulouts in Bristol Bay and the Gulf of Anadyr (Fay 1981).

Population estimates derived from joint U.S.-Soviet aerial surveys conducted in 1975, 1980, and 1985, indicated that the population had increased to near or above historic levels and may now be decreasing (Sease and Chapman 1988). Gilbert (1989) estimated the Bering and Chukchi seas walrus population to be 232,510 in 1985. Joint aerial surveys were conducted most recently in the fall of 1990, but the data have not been analyzed. Due to an unusually extensive pack ice retreat that altered the normal distribution of walruses, the data may not be comparable to previous surveys (D. Seagars, pers. commun.). Population estimates must be regarded with caution because of the time interval between censuses, the large variance around the estimates, and an unknown relationship between the number of animals counted on the ice and the number of animals uncounted in the water (Chapman et al. 1977, Gilbert 1989). Because of these factors, substantial changes in the Pacific walrus population could occur without detection.

A decrease in fecundity and calf survival and an increase in the age of sexual maturity for females was detected around 1980, indicating that the population had reached carrying capacity. Concurrently, the combined Soviet-U.S. catches doubled between 1970 and 1980. This combination has the potential to produce a dramatic population decline (Fay et al. 1989).

Available data indicates mating occurs in the Being Sea during the winter and young are born, usually on the ice (Burns 1970), between mid-April and mid-June during the northward migration from the Bering Sea to the Chukchi Sea (Fay 1982). Their migration usually begins in late March or early April and can either occur by swimming or by riding on the ice as it retreats northward. Calving areas in the Chukchi Sea extend from the Bering Strait to 70° N latitude (Fay et al. 1984b). Newborn calves are tended closely. Cows brood neonates to aid in their thermoregulation (Fay and Ray 1968), and carry them on their back or under their arm while in the water (Gehnrich 1984). Females with newborn young join together to form large "nursery herds" (Burns 1970). Summer distribution of females and young walruses is closely tied to movements of the pack ice relative to feeding areas. Walruses spend one-third of their time hauled out, usually on ice (Fay and Ray 1968).

Walruses feed mostly on benthic invertebrates and are thought to be limited to depths of about 100 m (Fay and Burns 1988). Stomach samples from animals summering in the Chukchi Sea found polychaetes, moon snails, crustaceans, tunicates, and anthozoans to make up greater proportions of the contents than did bivalves, which are normally most important. Most of the stomachs contained large amounts of sediments, and a high proportion of the sample contained seal flesh. Ingestion of seal flesh is thought to be unusual in the Bering Sea (Lowry and Fay 1984) but may be more common in the Chukchi Sea, where benthic invertebrate prey species appear to be smaller and less abundant (Fay et al. 1984a).

The juxtaposition of ice over appropriate depths for feeding is especially important for females and young walruses that may not be capable of deep diving or of long term exposure in the water. Walruses resting on the ice will be transported to other feeding areas, which helps to prevent overexploitation of their prey resource. On the Chukchi summering grounds most walruses are found within 20 km from the southern ice edge unless the edge retreats off the continental shelf. In those years, the terrestrial haulouts at Wrangel Island and Cape Lisburne and the surrounding waters become important resting and feeding areas (Fay et al. 1984b).

Terrestrial haulouts used traditionally in the eastern Chukchi Sea occurred at Cape Thompson, Cape Lisburne and Icy Cape (Fay 1957). More recently, only the Cape Lisburne site is used (Frost et al. 1983). Numerous haulouts are still in use in the western Chukchi Sea including Wrangel and Herald islands, which are important hauling grounds in September, especially in years when the pack ice retreats far to the north (Fay 1982).

Polar bears occasionally prey on walrus calves, and killer whales (*Orcinus orca*) take all age classes; however, the most important source of mortality is man (Fay 1982). Walrus hunting by Native peoples has occurred for thousands of years. Exploitation of walrus by Europeans has occurred in varying degrees since first contact. Currently, walrus are harvested by Alaskan Natives in coastal villages and by Soviet subsistence (shore-based) and commercial (ship-based) hunters (Sease and Chapman 1988). The Service monitors the Alaska Native harvest (Seagars et al. 1989) and the Soviets record their harvest. The Soviets are currently harvesting under a 4,000 animal per year quota (F. Fay, pers. commun.). There is no quota for the Alaskan Native harvest, but the catch has declined since 1985 from about 4,000 to about 2,000 in 1988 (Seagars et al. 1989). The number of walruses killed but not retrieved has been difficult to estimate by both groups, but it is estimated to be about 40 percent of the total catch (Sease and Chapman 1988).

Polar Bear

Polar bears occur only in the Northern Hemisphere, where the distribution is circumpolar, and they live in close association with polar ice. Their Alaskan distribution extends from Bering Strait to the U.S.-Canada border, usually within 300 km of the coast (Frame 1969, Amstrup, unpubl.). The world population estimate of polar bears ranges from 10,000–20,000 individuals (Larsen 1972), with possibly as many as 5,000 bears in Alaskan territory (Amstrup et al. 1986).

Currently, six distinct populations are believed to occur in the polar basin (DeMaster and Stirling 1981). Two populations adjacent to Alaska are identified as Wrangel Island-western Alaska and northern Alaska-northwestern Canada. A line extending offshore from Point Lay separates northern and western stocks. Recent telemetry information reveals a degree of exchange exists between the northern and western Alaska stocks. Denning females captured in the Beaufort Sea are now known also to have denned on Wrangel Island (Amstrup, pers. comm.). Similarly, one bear captured during the spring in western Alaska has denned in the Beaufort Sea area the following year (Garner, FWS unpubl.). For management purposes the northern and western stocks are considered discrete.

Polar bears of the Chukchi Sea are subject to the movements and coverage of the pack ice, which covers an average distance of 1400 km between the winter maximum and summer minimum (LaBelle et al. 1983) every year. The most extensive north-south movements of polar bears occur with the ice in spring and fall. Summer movements tend to be less dramatic due to the reduction

of ice habitat. Summer distribution is somewhat dependent upon the location of the ice front, however, polar bears are accomplished swimmers and are often seen on floes separated from the main pack ice. Therefore, bears can appear at any time in what can be called "open water." In some years, the ice front does not retreat north of Point Barrow. The summer ice pack can be quite disjunct and segments can be blown great distances carrying polar bears with them.

Females without dependent young (young-of-the-year or yearlings) breed in the spring and enter maternity dens, that they dig in the snow, by late November (Harington 1964). An average of two cubs are born in December, and the family group emerges in late March or early April. Only pregnant females den for an extended period in the winter, and it is now known that they den both on land and on the pack ice (Lentfer and Hensel 1980, Amstrup 1986). Females probably do not reproduce before their fourth year, and in Alaska the average age was reported to be 6.4 years, with a range of 4–8 years. The average reproductive interval is 3–4 years (Lentfer and Hensel 1980) and reproductive senescence probably occurs before age 20 (Ramsay and Stirling 1988). Following these conditions a female can produce a maximum of 10 cubs in her lifetime.

Greater than 90 percent of a polar bear's diet is ringed seals (*Phoca hispida*) (Stirling and Smith 1975). Bearded seals (*Erignathus barbatus*) and walrus calves are hunted occasionally. Polar bears opportunistically scavenge marine mammal carcasses and there are reports of polar bears killing beluga whales (*Delphinapterus leucas*) trapped in the ice. Polar bears are also known to eat nonfood items including styrofoam, plastic, pieces of car batteries (Lunn and Stirling 1985), anti-freeze, hydraulic, and lubricating fluids (Russell 1975, Amstrup et al. 1989, Derocher and Stirling 1990).

Polar bears hunt seals along leads and other areas of open water, or by waiting at a breathing hole, or breaking through the roof of a seal's lair. Lairs are excavated in snow drifts on top of the ice. Bears also stalk seals in the spring when they haul out on the ice in warm weather. The relationship between ice type and bear distribution is as yet unknown, but it is suspected to be related to seal availability.

Both fur and blubber are important to polar bears for insulation in air and water (Oritsland 1969). Cubs-of-the-year must accumulate a sufficient layer of blubber in order to maintain their body temperature when immersed in water. It is unknown to what extent young cubs can withstand exposure in water before they are threatened by hypothermia (Blix and Lentfer 1979). Polar bears groom their fur to maintain its insulative value.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. Cannibalism by adult males on cubs and occasionally on females (presumably that were too aggressive in defending cubs) is known to occur (Amstrup, pers. comm.). The most significant source of mortality is man. Before the Marine Mammal Protection Act was passed in 1972, polar bears were taken by sport hunters and residents. Between 1925 and 1972 the mean reported kill was 186 bears per year. Seventy-five percent of these were males, as cubs and females with cubs were protected. Since 1972, only Alaska Natives have been allowed to hunt polar bears for their subsistence uses or for handicraft and clothing items for sale. The Native hunt occurs without restrictions on sex, age, or number. Although the average annual harvest has declined since 1972, the percentage of females and cubs appears to have increased (Amstrup et al. 1986). From 1980–1985, the total annual harvest averaged 135 bears; 72 percent from the Chukchi Sea and 28 percent from the Beaufort Sea (Schliebe 1986).

Effects of Exploration on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas exploration activities in the Chukchi Sea may affect walruses in a number of ways. Air and vessel traffic can cause herds to stampede resulting in injuries and cow-calf separations, both of which may be fatal. Noise from air traffic, seismic surveys, ice breakers, supply ships, and drilling may displace walrus herds. The quantity and quality of walrus prey may be affected by contamination of the benthos from disposal of drilling muds and cuttings, from operational petroleum spills, and possibly from a blowout. Drilling discharges would be very localized and the projected frequency and volumes of oil spills precludes more than a very low overall effect (USDI 1990). The low probability of a blowout is discussed elsewhere.

Physical Obstruction, Sight, Smell, and Noise Disturbances

Quantitative research on the sensitivity of walruses to noise has been limited because no audiograms (a test to determine the range of frequencies and minimum hearing threshold) have been done on walruses, as they have for some other pinnipeds (Malme et al. 1989). Studies have assumed that a walrus' hearing was within the 13 Hz and 1200 Hz range produced by their own vocalizations (Ray and Watkins 1975, Miller 1985).

Fay et al. (1984) observed that walruses fled an approaching ship at distances ten-fold greater from upwind approaches than from downwind approaches, indicating that odor appeared to be the primary stimulus for a flight response. They found also that males tended to be more tolerant of disturbances than females and individuals were more tolerant than groups. Females with calves tended to be least tolerant. Walruses in the water were more tolerant than those hauled out, however, those hauled out on ice were more tolerant than those hauled out on land. Other factors, such as weather and length of time hauled out appeared to contribute to the response.

Response to aircraft disturbance varies with aircraft type, altitude, distance, flight pattern, and age-sex class of the animals (Burns and Harbo 1977, Fay et al. 1984, Johnson et al. 1989). In general, walruses responded when aircraft were flying below 400 meters altitude within 1–1.3 kilometers from them (Brooks 1954, Salter 1979, Fay et al. 1984).

Walruses using the Chukchi Sea in the spring and summer are predominantly adult females with dependent young and young animals of both sexes. These walruses migrate through the Bering Strait into the Chukchi Sea using the Chukchi Polynya (a recurring, nonlinear open water area) and lead system. In the early spring, females and calves may become concentrated in the limited amount of open water between the Bering Straits and Point Hope (Fay 1982) making them especially vulnerable to disturbances caused by air and vessel traffic. In the spring lead system, vessels may cause physical obstructions preventing the free movement of walruses. Females with calves are most sensitive to foreign sights, smells, and sounds and they exhibit avoidance responses at much greater distances than do other walruses. Calves are born during the northward migration and although calves can swim at birth they may be limited in the amount of time they can spend in the water. While on the ice, calves need to be brooded by their mothers to stay warm. If walruses must spend more time in the water to avoid vessel-related disturbances, they may become physiologically stressed by the increase in energy required to stay warm. Stampedes caused by air or vessel traffic are more likely to cause

calf mortality by trampling when the calves are very young, but less likely to cause separation because females keep close track of calves until they are 2–3 months old (Fay et al. 1984b).

On the summering grounds, in typical ice years, the walruses remain near the pack ice edge using the ice as a resting platform and the sea floor beneath the ice for feeding. Specific feeding areas are not known, but walrus distribution indicates that the entire eastern Chukchi Sea may be important. Air and vessel traffic during this later period can also cause walrus herds to stampede off the ice, which may result in injuries to calves from trampling, although the calves are older and less vulnerable to being crushed. Cow-calf separations become more likely as the calf becomes older because it becomes the calf's responsibility to maintain the bond (Fay et al. 1984b). Although some impacts to individuals may occur, we do not believe proposed air and vessel traffic will reduce numbers enough to affect the population. This conclusion is based on the assumption that air and vessel traffic will be limited within the spring lead system during the walrus migration.

A stationary drilling rig probably does not act as a physical obstruction to walruses in an open water situation. However, young walruses may be attracted to a drillship. One incident occurred in the 1989 drilling season where a lone walrus calf surfaced in the center hole of the drillship's hull (the moon pool) and came in contact with hydraulic fluid that had been released by a broken line. The walrus calf was removed from the moon pool with a cargo net, released into the Chukchi Sea, and was not seen again.

Limited data from monitoring studies of the 1989 drilling season indicated walruses may become accustomed to drilling noise from a stationary location. Noise produced by icebreaking activity near the drill site appeared to be more disturbing, and walruses responded by moving away from the ships into the pack ice (Brueggeman et al. 1990). Underwater noise produced by ship's propellers (cavitation) is second in intensity only to noise generated for seismic exploration. Ice management requires that ships accelerate, reverse direction, and turn rapidly—activities which maximize propeller cavitation and the resulting noise levels. The reason walruses moved away from the noise source into the pack ice is unknown.

Seismic surveys create more noise than general vessel and icebreaker traffic but since these surveys are conducted only in open water, they are likely to disturb fewer walruses than icebreaking activities.

Contaminants

Walruses root along the sea floor for bivalve mollusks and other benthic invertebrates. Drilling muds and cuttings contain varying amounts of contaminants depending upon the muds used and the geology of the drilling location. The limited volume and dispersal of drilling discharges would have a very low effect on lower-trophic-level organism populations because of the very localized nature of the impact; only those organisms in proximity to the discharge point would be affected (EPA in USDI 1990).

The Environmental Protection Agency (EPA) regulates offshore drilling discharges through the issuance of National Pollutant Discharge Elimination System (NPDES) permits. The EPA establishes toxicity limits for effluent discharges offshore and prohibits the discharge of those effluent streams that exceed the established limits. The NPDES permits issued by EPA for arctic operations have special discharge limitations based on water depth and environmentally-sensitive areas, monitoring, testing and reporting requirements, and special seasonal requirements and restrictions based on open-water and varying ice conditions.

Information is available on the effects of drilling muds and cuttings in arctic waters. A report title, "Drilling Discharges in the Marine Environment" was compiled by the National Research Council's Marine Board (1983) to assess the fates and effects of drilling fluids in the marine environment. The document discusses the fates and effects issue in depth and presents a comprehensive list of references used by the panel in compiling the report. A recent book, entitled Drilling Wastes (Engelhardt et al. 1989) includes a report on the localized, temporary accumulation of drilling muds discharged from man-made islands in the Canadian Beaufort Sea and a report on the lowered bioavailability of the metals in drilling mud barite. In a December 28, 1990 **Federal Register** (FR) notice (56 FR 10664), the EPA proposed new source-performance standards for the offshore oil and gas industry, partly because much new information has been collected regarding waste characterization, industrial practices, and environmental effects, and other associated areas. The EPA has placed restrictions on the amount of mercury and cadmium in barite, a major constituent of drilling muds that reduces the availability of these contaminants to the benthic communities and feeders.

Up to eight exploratory wells could be drilled in any given year in the Chukchi Sea, as projected in the MMS Environmental Impact Statements for Chukchi Sea oil and gas lease sales 109 and 126 (USDI 1987, 1990b). The MMS also estimates the maximum amount drilling muds and cuttings that would be released from exploration drilling in a given year. The EPA (1990) estimated that discharges from exploratory drilling would not exceed applicable water-quality criteria outside of a 100-meter radius (or 0.03 square kilometer) around each discharge site in the Chukchi Sea exploration area. The MMS estimate that the drilling of all exploration, delineation and production wells will temporarily affect less than 1% of the benthic prey available to walruses in the sale area.

Even though the calculated probability of a blowout resulting in an oil spill is very low for exploration, a blowout has the potential to affect walruses. Oil spills have been shown to cause mortality to some benthic invertebrates especially in the immediate vicinity of the spill. Sublethal effects of oil on benthic invertebrates include lowered feeding, growth, and reproductive rates (Percy and Mullin 1975). Bioaccumulation of hydrocarbons could also be fatal to invertebrates.

There is evidence that the Pacific walrus population has reached carrying capacity and may currently be food-limited (Fay et al. 1989). Reductions in food availability or quality could result in a decrease in the number of walruses that can be supported in the Chukchi Sea.

No specific research has been conducted on the direct effects of oil on walruses, but effects can be extrapolated from studies done on other pinnipeds. Crude oil caused eye irritation, kidney lesions, and liver damage to six ringed seals, while it caused death within 71 minutes for three others (Smith and Geraci 1975, Geraci and Smith 1977). The variation in effects of crude oil is thought to be related to the condition of the animal. Animals nutritionally or otherwise stressed would be more vulnerable (Smith and Geraci 1975).

The disturbance of a large cleanup effort may have more of an impact on walruses than the oil. It is unclear whether walruses would become oiled by continued use of the terrestrial sites or if walruses would avoid the oiled beaches and abandon those haulouts. There is evidence from Soviet reports that chronic disturbance, such as cleanup activity on the terrestrial

haulouts, may result in their permanent abandonment (Fay et al. 1984b).

Subsistence

The possibility that oil exploration activity may disrupt distribution patterns, or reduce the availability of walruses from traditional hunting areas are the primary concerns of Native residents (USDI 1983) of the affected coastal villages (Wales, Shishmaref, Kivalina, Point Hope, Point Lay, Wainwright, Barrow) and inland villages (Atqusuk, Kiana, Noatak).

The "open water" season for oil exploration activities coincides with the walrus hunting season for the villages of Barrow, Wainwright, Point Lay, and Point Hope. In 1988, hunters from Wainwright harvested 54 of 58 walruses in July and August (USDI 1989b). Point Hope, the southernmost of these four villages, typically hunts among the ice floes in June and early July (USDI 1984). After the ice is gone, Point Hope hunters take walruses at terrestrial haulouts around Cape Lisburne.

Except for a 50 mile stretch northwest of Cape Lisburne, the entire coast of the Chukchi Sea from Cape Thompson to Barrow is used for walrus hunting. Barrow hunters hunt in the area extending 25 miles to the north, 50 miles to south, and 30 miles offshore. Wainwright hunts along 125 miles of the coast, as far offshore as 40 miles, overlapping with the area used by Barrow. Point Lay hunts from Icy Cape to within 60 miles of Cape Lisburne, and up to 30 miles offshore (USDI 1989). Point Hope hunts a smaller area centered around the village, and they hunt within 10 miles of shore (USDI 1988, 1989).

Three lease prospects (Bagel, Eclair, and Kolache) are located within or adjacent to Point Lay's walrus hunting area. Two others (Bearclaw and Napoleon) are less than 10 miles away. Residents of Point Lay regard oil exploration to be of greater risk than benefit to their village (USDI 1989).

The effects on subsistence-harvest patterns that may occur as a result of oil and gas exploratory activities carried on in the Chukchi Sea would be minor. Hunting success for walrus varies considerably from year to year depending upon the ice and weather conditions. Walrus could be affected by noise and traffic dusturbance from aircraft and support activities that results in only short-term, localized effects. Since most walrus hunting activities occur within a wide area of open water, boat and air traffic interruptions typically may cause boat crews to hunt longer or take extra trips but may not reduce the overall harvests of walrus. It is thought that exploration activities will not limit the availability of walruses for subsistence uses and that any impacts from exploration activities can be sufficiently mitigated by other measures to increase the availability to allow subsistence needs to be met.

Polar Bear

Oil and gas exploration activities in the Chukchi Sea may affect polar bears in a number of ways. Drillships and icebreakers may be physical obstructions to polar bear movements, although these impacts are of short term and localized effect. Noise, sights and smells produced by exploration activities may repel or attract bears, either disrupting their natural behavior or endangering them by threatening the safety of oil workers. Although the probability of operational oil spills or a blowout is low, they might result in bear deaths either as a direct result of oiling or as an indirect result of impacts to their prey.

Physical Obstruction, Sight, Smell, and Noise Disturbances

Little research has been conducted on the effects of noise on polar bears. It is known that denning females are sensitive to noise disturbance and may abandon dens, risking the lives of their cubs by early departures from the den (Amstrup 1985). Polar bears are curious and tend to investigate novel sights, smells, and possibly noises (Stirling 1988). This behavior brings them into the vicinity of industrial sites in the arctic. Underwater noises produced by exploration are probably not an important disturbance because bears spend most of their time on the ice or at the surface of the water. Polar bears are known to run from the noise and sight of icebreakers and aircraft, especially helicopters. The effects of fleeing from aircraft may be minimal if the event is short and the animal is otherwise unstressed. On a warm spring or summer day, a short run may be enough to overheat a well insulated polar bear. Likewise, fleeing from a working icebreaker may have minimal effects for a healthy animal on a cool day. A female with cubs-of-the-year may be quite stressed if disturbed for very long.

If a drillship is surrounded by ice it is more likely that curious bears will approach. Any on-ice activities required by exploration create the opportunity for bear-man interactions. In relatively ice free waters polar bears are less likely to approach drill sites. However, at the Belcher site, in the Beaufort Sea, during a period of little ice, a large floe threatened the drill rig. After the floe was hit by an icebreaker, workers noticed a female with a cub-of-the-year and a lone adult swimming nearby. The cub was clutching the female, a typical behavior of young cubs in the water (Amstrup 1989). The fate of this trio is unknown. It is likely that the adults survived by hauling out on another floe. Cubs are vulnerable to exposure in water until they develop a substantial blubber layer.

Drillships and ice breakers may act as physical obstructions in the spring during the start-up period for exploration if they pass through a restricted lead system, such as the Chukchi Polynya. Polynyas are important habitat for marine mammals, which makes them important hunting areas for polar bears (Stirling and Cleator 1981). Ship traffic in these ice conditions may intercept or alter movements of bears. A similar situation may occur in the fall when the pack ice begins to expand.

Contaminants

Polar bears are known to eat many toxic nonfood items including styrofoam, plastic, parts of car batteries (Lunn and Stirling 1985), anti-freeze (Amstrup et al. 1989), hydraulic, and lubricating fluids (Russell 1975, Derocher and Stirling 1990). In most instances the effects of foraging on such items is unknown, but in one case a bear died from eating ethylene glycol (main ingredient of anti-freeze) colored with rhodamine B. This combination is used for marking runway center lines on snow and ice, however, ethylene glycol is widely used for anti-freeze in vehicles. Why bears eat toxic items is unknown, however, an increase in the availability of these items due to exploration activity could translate into an increase in bear mortality.

The discharge of drilling muds and cuttings probably does not affect the feeding of pelagic ringed seals and therefore probably does not have any direct or indirect effects on polar bears.

The direct effects of oil on polar bears will occur as a result of ingesting oil while grooming or while feeding on oiled prey and beach cast carcasses. Bears will ingest petroleum products in amounts that can be fatal (Oritsland et al. 1981, Engelhardt 1981, and Hurst and Oritsland 1982 *in* Griffiths et al. 1987). The fur of oiled bears loses its insulative properties and may result in death by hypothermia (Scholander et al. 1950, Oritsland 1970 *in* Griffiths et al. 1987).

Polar bears may also be affected by indirect effects of spilled oil on ringed seals. Effects of oil on invertebrates may reduce the productivity of the area for

ringed seals and consequently alter polar bear distribution.

Polar bears are not likely to avoid oil spills intentionally, although they may learn to avoid oil if they experience discomfort from contact with it (Hansen 1985). A blowout or other major spill may impact polar bears at the population level. Although the overall density in the Chukchi Sea may be low, wide ranging movements of polar bears over the duration of a spill have the potential to result in more than small numbers of bears encountering the spill (Marine Mammal Commission 1990). The effects of an oil spill may be greater than negligible depending on a number of variables, such as time of year, volume of oil discharged, duration of the spill, and the number of bears contacting the oil. The Service acknowledges that there is a low probability of oil spills occurring and contacting polar bears or their habitats, but the effects if a spill occurred could be significant. The probability of an oil spill must be balanced with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill may be significant, if the probability of occurrence is low a finding of negligible impact may be appropriate.

The legislative history of the 1986 Amendments to the Act endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact: "The degree of certainty of occurrence required in these judgements should be inversely proportional to the resultant harm to the overall population." (132 Cong. Rec. S16305 (Oct. 15, 1986)). In this case the Service has determined that a finding of negligible impact is appropriate.

Subsistence

The possibilities that oil exploration activity may reduce the availability of polar bears, or disrupt distribution patterns from traditional hunting areas are the primary concerns of Native residents (USDI 1983) of the affected coastal villages (Wales, Shishmaref, Kivalina, Point Hope, Point Lay, Wainwright, and Barrow) and inland villages (Atqusuk, Kiana, and Noatak).

Depending upon ice conditions, the subsistence harvest of polar bears can occur year round in the northern Chukchi Sea villages, with peaks in spring and fall (Schliebe 1988). Direct conflicts are less likely to occur between polar bear hunters and exploration activities than between walrus hunters and exploration activities. Polar bear hunting areas are typically much smaller than those for walruses, with hunters remaining within a few miles of shore (USDI 1989a, USDI 1984).

Little information is available for predicting the effects of offshore exploration on subsistence hunting in the Chukchi Sea. Hunting success varies considerably from year to year because of variable ice and weather conditions. Because the polar bear is hunted almost entirely during that part of the year in which ice is prevalent, it is unlikely that exploration-only activities would have a big effect on the harvest of that species because drilling activities associated with exploration would occur entirely within the open-water season. Therefore, it is assumed that the effect on the polar bear would be very low. It is believed that exploration activities will not limit the availability of polar bears for subsistence uses and that any impacts can be mitigated by other measures to increase the availability of polar bears to allow subsistence needs to be met.

Conclusions

Based on the previous discussion, the Service makes the following findings regarding the proposed action.

Impact on Species

The Service finds that, based on the best scientific information available, the effects of currently planned and projected exploration in the Chukchi Sea will not adversely affect polar bears and walruses through effects on their annual rates of recruitment or survival if certain conditions are met. To date, there has been no oil spilled as a result of a blowout during exploratory drilling on the U.S. OCS. The probability of a blowout during exploratory drilling on the U.S. OCS is extremely remote and the probability of a major oil spill occurring from such a blowout is even more remote. The National Marine Fisheries Service (NMFS) recently published final regulations authorizing incidental takes of small numbers of various species of whales and seals. In the preamble of the proposed rules associated with those final regulations, the NMFS addressed the probability of the occurrence of an oil spill from exploratory operations. Upon review, they concluded that the possibility of a spill was so small that there was "no need to consider the possible impacts of a spill, not that the impacts would be negligible if in fact a spill did occur." (54 FR 40703 (October 3, 1989).) The Service concurs that since the probability of an oil spill is low during the exploration phase, an overall conclusion that the proposed exploration activity will have a negligible impact on the species can be reached.

Last year approximately 500 additional exploration wells were drilled on the U.S. OCS and only one suffered a blowout, and that was of natural gas. No oil was spilled (MMS unpubl.). Additionally, there has not been a single blowout in any of the 75 wells drilled to date in the Alaska OCS.

Liability for illegal discharges of toxic materials into the environment is described in the Clean Water Act. In the event of a catastrophic spill the Service would reassess the impact to the population and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act.

The finding of "negligible impact" would apply only to exploration in the Chukchi Sea, and would not apply to the development and production phases of oil and gas activity. The following conditions are proposed to eliminate interference with normal breeding, feeding, and migration patterns to ensure that the effects remain negligible.

First, no taking of walruses or polar bears would be allowed in the Chukchi Sea before June 15. Each year the Service would determine when the spring migration of walrus is no longer confined to the spring lead system. This would limit interference from exploration activities while marine mammals are concentrated in the spring lead system. It is important to consider transit to and from exploration sites as part of exploration activity, especially when icebreaking, support and drill rig vessels enter the Chukchi Sea for the purpose of exploration before the shipping lanes are open to general traffic.

Second, each activity would require a monitoring plan approved by the Service. The purpose of the plan would be to monitor the effects of the activity on polar bears and walruses in the exploration area. The monitoring plan is due to the Service when the applicant applies for a LOA, at least 90 days before the activity is scheduled to begin.

Third, findings for this exemption were based on the total level of activity estimated by the industry and the MMS in its environmental impact statements. If the level of activity, including the number of miles for seismic surveys, the number of drilling units, and the number of support vessels and aircraft flights associated with exploration, is more than the level estimated by the industry and the MMS, the Service would have to reevaluate its findings to determine if they continue to be appropriate based on the higher level of activity.

Impact on Subsistence

Exploratory activities may occasionally place physical barriers between marine mammals and subsistence hunters (i.e. survey vessels and barges traveling to and from exploration sites or even the drillship itself). In addition, there are increased noise levels from aircraft, vessels, and seismic surveys. Marine mammals may avoid certain noise sources and certain structures such as drillships. If two conditions are met, however, the Service proposes to find that these activities over the next five years are not likely to reduce the availability of the walruses and polar bears to a level insufficient to meet subsistence needs.

Since there have been no offshore exploration activities conducted near subsistence hunting areas in the Chukchi Sea, evidence is insufficient to show that such activity has directly displaced walruses and polar bears from traditional hunting areas.

The conclusion that the activities would not have an "unmitigable adverse impact"applies only to exploration, and does not apply to the development and production phases of oil and gas activity in the Chukchi Sea. The results of the monitoring during the exploration stage would affect regulations for subsequent stages.

The first condition concerns deferment of exploration activity during the spring migration through opening leads. This ban on the incidental taking of walruses and polar bears is intended to ensure that the leads have deteriorated and that there is ample open water to allow walruses free movement to avoid support traffic. Exploration activities will be confined to the open water season which will not exceed the period June 15 to November 30. Each year, the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea. In some years this date may be later than June 15. This should allow the villages to participate in subsistence hunts for polar bears without interference and to minimize impacts to walruses during migration. When SWEPI plans to explore in those prospects near Point Lay further stipulations may be necessary to ensure that exploration activities do not reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs.

To avert or lessen any potential impacts on subsistence, the Service believes it necessary for the exploration companies to continue cooperative efforts with villages that conduct subsistence hunts for walruses and polar bears in areas that might be influenced by the industry's activities. This would include, but is not limited to, the villages of Point Hope, Wainwright, Barrow, and Point Lay, with special attention to Point Lay where offshore hunting areas overlap with two prospect areas.

Therefore, the second condition would require applicants requesting a LOA to contact the subsistence communities and the Eskimo Walrus Commission to discuss potential conflicts and resolutions. Each applicant would submit a plan of cooperation to the Service that states how the operator would work with affected Native communities and what would be done to avoid interference with subsistence hunting of walruses and polar bears. This plan is due to the Service when an applicant applies for a LOA, at least 90 days before the activity is scheduled to begin. The Service would review this plan to ensure any potential adverse effects on the availability of the animals are minimized.

If there were evidence in the future that exploration activities are reducing the availability of marine mammals for subsistence, the Service would reevaluate its findings regarding permissible limits of harassment and the measures required to ensure continued subsistence hunting opportunities.

Monitoring

A plan for monitoring the effects of exploration on polar bears and walruses, that has been reviewed and approved by the Service, would be required of all applicants requesting a Letter of Authorization. A monitoring plan must be submitted each year when an applicant applies for a Letter of Authorization. As the requirements for monitoring are likely to vary depending on the activity and the location, applicants are strongly urged to develop plans in cooperation with the Service. In addition, the Service recognizes that other opportunities will occur outside of the Letter of Authorization process for the Service and possibly the applicant to cooperatively conduct research that may resolve other deficiencies in knowledge of walrus and polar bear populations and habitat requirements. Such studies would be related to the need to determine negligible impact decisions for exploratory activities.

The purpose of monitoring programs is to determine short-term and long-term direct, indirect and cumulative effects of authorized oil and gas exploration on polar bears and walruses in the Chukchi Sea. Plans must identify the methods that will be used to determine and assess the effect on the movements, behavior, and habitat use of polar bears and walruses in response to exploration activity, including travel to and from drill sites.

Monitoring programs may be required to answer some basic biological questions as a necessary step toward understanding the relationships between the proposed activity and the species' survival, productivity and habitat requirements. The Service believes it is the responsibility of the applicant to provide the required information and to demonstrate negligible impact since the applicant is requesting authority to take marine mammals and is the beneficiary of such authority. The basic elements of the monitoring programs would be to determine and report when, where, how and how many marine mammals, by species, age/size and sex are taken in the course of authorized exploration activities so as to verify the nature and level of take. Methods and techniques to detect possible longer-term changes and trends in abundance, distribution and productivity of populations of affected species should be developed. The responsibility for developing these methods is not necessarily that of the applicant.

The operator has a responsibility for monitoring necessary to verify that authorized activities have negligible effects. The MMS is responsible for identifying adverse effects of OCS exploration and development in offshore water beyond state jurisdiction. The Service is responsible, under the Act, for assessing that incidental taking will have a negligible impact on walrus and polar bear populations and will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

There are numerous objectives that should be addressed through monitoring programs. Results of monitoring programs would be summarized and reviewed each year. Objectives for each year would be reassessed based on the results.

Monitoring methods which might be used include, but are not limited to, aerial surveys, shipboard observations, acoustic studies, and monitoring radio-tagged walruses and polar bears in the vicinity of the drill sites.

At its discretion, the Service may place an observer on board drillships, icebreakers, support ships, and aircraft to monitor the impact of exploration activities on walruses and polar bears and to observe other activities authorized by a scientific research permit or Letter of Authorization.

The Service will coordinate monitoring plans for walruses and polar

bears so that information is gathered in a consistent manner. The Service also will coordinate with other agencies that require monitoring programs (National Marine Fisheries Service, State of Alaska) to avoid duplication of effort and data at the same exploration site, in the same season.

Monitoring programs will be reviewed annually and monitoring plans may be modified from year to year. The Service will encourage peer review of the monitoring plan design as well as interpretation of results.

Development and participation in a cooperative research program is not a requirement for obtaining a LOA. The Service, however, encourages research of polar bears and walruses such as that funded by the National Fish and Wildlife Foundation. Lessees and the Service shall meet annually to discuss monitoring goals and results. This type of program could create opportunities to collect valuable information that would provide additional insight into the relationship between oil and gas activities and the basic biological requirements of the two species of concern.

Discussion of Comments on the Proposed Rule

Negligible Impacts

Comment: The Service cannot make a finding of negligible impact because there is not enough scientific information to determine whether a proposed level of taking would be to the disadvantage of the species involved. One commenter stated that the Service must have sufficient data to ensure that the effects from the proposed activities will not cause populations of the affected species to diminish below their Optimum Sustainable Population (OSP).

Response: The Service uses the regulatory standard of "the best scientific evidence available" to determine the impacts of activities on walruses and polar bears. Because energy exploration is a relatively recent occurrence in the Arctic region, there is limited information on the effects of energy related activities on these species. Based on available information on walrus and polar bear distribution, movements and habitat needs, the Service considered the proposed activities and determined that exploration will not have more than a negligible impact on these species (refer to the preamble in the Proposed Rule—56 FR 7654 (February 25, 1991), and the Environmental Assessment on the Final Rule to Authorize the Incidental Take of Small Numbers of Walruses and Polar Bears During Open Water Oil and Gas Exploration in the Chukchi Sea). No new information was submitted, or has come to light, since publication of the Proposed Rule and the Service believes that that determination is still valid.

Monitoring is necessary to verify the findings made by the Service and, to that end, the monitoring and reporting requirements will help the Service assess the effects of exploration activities on an annual basis. If new evidence or data indicate that the impact of exploration on these species is more than negligible, the Service will reassess its findings. LOAs for incidental take will be issued on a yearly basis and the Service has the authority to add, reduce or withdraw conditions to the authorization, or completely withdraw the authorization depending on the results of the evaluation.

Under the Service's regulatory definition, a finding of negligible impact would require that the impact resulting from the specified activity cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. An OSP determination is not required to make a negligible impact finding. Section 101(a)(5)(C)(ii) of the Act clearly exempts the issuance of specific regulations from compliance with the formal rulemaking requirements of section 103 of the Act. The Congressional intent behind section 101(a)(5) was to alleviate conflicts, where the impacts are negligible, between activities (other than commercial fishing) that involve the incidental taking of marine mammals and the strict moratorium against taking. Even if walrus and polar bear populations were in decline, the test is whether the take allowed is "reasonably likely" to affect the population as a whole. Given the extremely small numbers of individuals likely to be taken, and the fact that the great majority of any takes may be no more than disturbance of an individual, such activity will not "reasonably likely" affect the population as a whole.

One commenter thought that because the scientific data indicate that the polar bear population is "stable" that the Service cannot issue incidental take regulations unless it is sure that incidental takes will not cause additional losses, particularly to females of reproductive age, because that would certainly have more than a negligible impact on the polar bear population. The Service wishes to point out that healthy marine mammal populations that have reached an equilibrium level usually experience fluctuations in population numbers within some normal range due to a variety of environmental and biological factors. Such fluctuations do not pose a risk to the stocks remaining within stable population limits. The Service believes that minimal impacts on a healthy stock caused by incidental taking can still be considered negligible if such taking does not cause the population to fluctuate beyond normal limits. Slight impacts on the stock resulting from incidental take do not qualify as "adverse effects" on annual rates of recruitment or survival if the population stock is maintained at essentially the same level. The petitioner, SWEPI, examined the distribution data for polar bears and determined that the dispersed nature of the population, as well as its tendency to be associated with heavy ice concentrations, lowers the likelihood that there will be many interactions between exploration operations and polar bears during "open water" activities. They predicted that it is unlikely that more than 10–5 polar bears will be taken by incidental disturbance as the result of exploratory operations in the Chukchi Sea during the 5 year period in which the regulations requested are in place. The petitioner does not anticipate any polar bear deaths and is not seeking authorization for polar bear mortalities. The petition contains no discussion of the possible necessity of shooting polar bears in order to protect human workers because the petitioner does not believe that any of SWEPI's operations will create a situation that could lead to human interaction with polar bears. Should an operator anticipate interactions, the Service recommends that a polar bear interaction plan be developed as a contingency for situations when workers may be on ice for brief periods. The Service has examined the available scientific evidence and concurs that the likelihood of incidental take of polar bears during the "open water" season is low and that the great majority of any takes may be no more than the minor disturbance of an individual; therefore, the effect of exploration activities on the population supports the determination of negligible impact.

Comment: The Service has failed to perform a true negligible impact analysis, which includes an evaluation of all impacts, including those which are indirect, direct and cumulative. The Service failed to perform a meaningful habitat impacts assessment prior to rendering its negligible impact finding and issuing the regulations.

Response: The Service disagrees with this assessment. The regulations and

accompanying Environmental Assessment covered the full range of species' biological factors, including an assessment of indirect effects on habitat, behavioral patterns, breeding and feeding, subsistence harvest and management considerations. These factors largely determine rates of recruitment and survival. Although the 1986 Amendments to the Act deleted the reference to "habitat" from the determination of negligible impact, the stated reason for this change confirms that the effects on habitat remain important in the assessment of negligible impact:

> A minor impact upon a small segment of habitat might be found to be more than negligible under the prior standard, even if it has no impact upon the overall population utilizing the habitat. But it is also the case that populations could be affected adversely by actions that damage rookeries, mating grounds, feeding areas and areas of similar significance. The Secretary shall take those impacts into accounts [sic] when making a "negligible impact" determination under section 105(A)(5)(i) [sic]. Because these factors are to be taken into account, in making such a determination, subparagraph (a)(2)(A) of this section deletes the phrase "and its habitat" from subparagraph 5(A)(i) [sic] of the MMPA. 132 Cong. Rec. S16305 (Oct. 15, 1986).

The Service is well aware of its responsibilities to consider these factors when determining negligible impact, and impacts on habitat were part of the consideration in making the finding of negligible impact on the walrus and polar bear populations.

Oil Spills

Comment: Several commenters were concerned about the probability of an oil spill as a result of a blowout when an exploratory well is drilled. The predictions made by the MMS regarding the probabilities of a blowout were questioned. Commenters were concerned that the oil industry has not demonstrated it is capable of containing or cleaning up an oil spill in an environment such as offshore Alaska.

Response: The Service stands by its assessment that the probability of an oil spill from a blowout justifies a finding of negligible impact. The legislative history of the 1986 Amendments to the Act endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact:

> The degree of certainty of occurrence required in these judgments should be inversely proportional to the resultant harm to the overall population. 132 Cong. Rec. S16305 (Oct. 15, 1986).

The Service has applied this balancing test to the present petition. Since there has never been an oil spill resulting from a blowout at an exploratory well drilled on the U.S. Outer Continental Shelf (OCS), it is difficult to generate not only a statistical basis for predicting when and if such an event will occur, but what the consequences of such an event would be. While blowouts have occurred, they have been few in number and resulted in discharge of only water or gas.

The MMS requires companies operating anywhere in the Arctic region to satisfy operation requirements such as a Critical Operations and Curtailment Plan which describes how the operator will safely and promptly secure the well, disconnect from the wellhead, and move offsite if there are unfavorable operating conditions, and they must monitor ice, meteorological and oceanographic conditions. This plan must be approved by the MMS before the company will be given a permit to drill. Blowout prevention equipment must be installed and tested on each well. All personnel are required to complete a MMS-approved well control training program. The MMS inspects all exploratory operations in the Arctic region to ensure compliance with all regulations, orders, stipulations and conditions of approval of exploration plans and to see that no unnecessary risks are being taken by operators that would jeopardize the safety of the well or personnel, or increase the potential for blowouts or oil spills. The Service reviews and comments on contingency plans.

Comment: Several commenters asked that the regulations include the results of studies done in response to the Exxon Valdez oil spill in Prince William Sound.

Response: Reports with results from the actual studies are not yet available because of pending litigation. A summary of the studies has been released. However, it is only a description of the work that is being done and does not contain results. If new information becomes available from any source indicating that the effects may not be negligible, the Service will reevaluate its findings.

Definition of Take

Comment: Several commenters expressed confusion over the term "take." Some assumed a take always implies an injury or death. One commented that there was disagreement as to the level of disturbance which constitutes a take and that minor behavioral disturbances are not considered a take within the meaning of the Act.

Response: The term "take" as defined in 50 CFR 18.3 means to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. It is true that proof of "take" need not involve a showing of death or physical injury. However, minor disturbances of marine mammals, expecially those that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity, may not constitute a "take."

Number of Animals Taken

Comment: The Service failed to find that only "small numbers" of walruses and polar bears would be taken as is independently required by section 101(a)(5)(A) of the Act. This commenter said that it is the Service's duty to estimate actual numbers of each species that may be taken and explain why its estimate is "small" within the context of a species' population.

Response: The regulations implementing the 1986 amendments to section 101(a)(5)(A) of the Act define "small numbers" to mean "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." (50 CFR 18.27(c)). The Service declines to prescribe actual numbers for taking levels. Such numerical limits do not take into account the effect of the type of taking such as harassment versus mortality. Congress recognized the imprecision of the term "small numbers," but "was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits." H.R. Rep. No. 228, 97th Cong. 1st Sess. 20 (1981).

According to implementing regulations found in 50 CFR 18.27(d), in order for the Service to consider allowing the taking of small numbers of marine mammals incidental to a specified activity, a written request shall include among other requirements, an estimate of the species and numbers of marine mammals likely to be taken by age, sex and reproductive conditions, and the type of taking and the number of times such taking is likely to occur. These regulations place on the applicant the burden to estimate the number and type of taking. The Service's responsibility is to evaluate the impacts resulting from the specified activity. If

the Service makes certain findings, specific regulations will be issued that, among other things, establish permissible methods of taking and other means of effecting the least practicable adverse impact on the species.

In their petition, SWEPI estimated that the number of encounters with walruses in a given year will probably not exceed 200. Although no lethal takes are anticipated, the petitioner states that 20 or less lethal takes of walruses could occur during the 5 year term of the regulations. They predict that no more than 10–15 polar bears will be taken by incidental disturbance and no polar bear fatalities are anticipated. Lethal take of polar bears was not anticipated in the petition.

The Service presented the above estimates in the Environmental Assessment but did not include them in the proposed regulations. The estimates for incidental take have been included in the preamble to the Final Rule in order to present the magnitude of the take on which the Service is basing its finding of no negligible impact to walrus and polar bear populations.

In 1989 and 1990, SWEPI implemented a monitoring program in the Chukchi Sea to determine the effects of exploratory oil drilling operations on walruses and polar bears. Less than 1 percent of the Pacific walrus population passed near an active prospect during the 1990 monitoring program compared to approximately 2.5 percent during the 1989 program. Of the 24,889 walruses observed from aerial and vessel surveys in 1990, approximately 2 percent were encountered within 18.5 kilometers (km) of active prospects. In addition to walruses, 25 polar bears were observed in 1990 and 18 bears were observed in 1989 (Brueggeman et al. 1991). The Service has examined this evidence and determined that it supports the decision that exploratory activities in the Chukchi Sea will result in the taking of "small numbers" of walruses and polar bears and the total taking will have a negligible impact on those populations. Continued monitoring programs will help the Service assess this decision on an annual basis.

Another commenter asked what would happen if SWEPI went beyond their estimation of takes for walruses. If this situation occurred, the Service would reevaluate its finding of negligible impact. The implementing regulations in 50 CFR 18.27 provide authority to withdraw or suspend LOAs if the Service determines the regulations prescribed are not being substantially complied with; or the taking allowed is having, or may have, more than a negligible impact on the species or stock, or an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

Impact on Species

Comment: One commenter was concerned that the number of helicopter flights would cause excessive walrus calf mortality. They thought the Service should impose operating restrictions, such as no more than two helicopter trips per week if the ice edge was between the prospect and the land. Another commenter noted that all of the cases of walrus stampede behavior resulting in direct fatalities have taken place while walruses were hauled out on shore, not ice.

Response: While it is true that all known cases of walrus stampede behavior resulting in direct fatalities due to trampling have taken place while walruses were hauled out on shore, it is not true that stampedes on ice do not cause fatalities. Dependent calves left on the ice after a stampede or separated from their mothers in the confusion may be abandoned and die. Fay et al. (1984) documented approximately 300 groups of walruses on the ice that reacted to the approach of a ship and went into the water. In three of those groups a calf was left behind and was not retrieved. In one instance a calf was captured by a bear when the group went into the water.

Guidelines for eliminating or minimizing harassment due to helicopter and boat traffic are included by the MMS in their Information to Lessees (ITL) clause (e) for Chukchi Sea Lease Sale 109. The LOAs will carry protective stipulations similar to ITL (e) guidelines. The Service believes that these protective stipulations will negate the need to limit to two the number of helicopter trips per week as was suggested by the commenter.

Comment: One commenter felt that since regulations were being developed for the open water season that polar bears would not be affected by noise nor would it be likely that a significant number of polar bears would be affected if a spill were to occur.

Response: The open water season does not preclude the presence of ice or the presence of polar bears. Bears are good swimmers and have been seen far from ice or land. Spilled oil that comes in contact with ice could remain through the winter and contaminate bears and their prey. Noise is probably a factor in attracting curious bears to sites of human activity. This attraction can prove detrimental to bears when human-bear interactions occur.

Comment: One commenter believed the proposed action would violate the intent of the 1976 International Agreement on the Conservation of Polar Bears.

Response: This Final Rule is authorized by section 101(a)(5) of the Act. While the Service is not aware of any conflict between the 1976 Agreement and this Final Rule, it should be noted that the 1976 Agreement is not self-executing, and Congress has not implemented the 1976 Agreement under section 101(a) of the Act. Therefore, even if a conflict existed, such would not be an impediment to the issuance of this Final Rule. Nevertheless, the Service, as the resource agency responsible for polar bears, intends to ensure that polar bear habitat remains healthy and intact. The Service will guide and evaluate monitoring programs that will report the effects of activity on polar bears. The analysis of these monitoring reports may result in the modification of regulations or the conditions of operation, as necessary, to assure that the activity is having no more than a negligible effect upon polar bear rates of recruitment and survival. The Service may suspend or withdraw authorization for incidental take if monitoring programs indicate that the taking is having a greater than negligible effect on the population.

Comment: One commenter was concerned that seasonal restrictions did not protect the walrus nursery herds congregated at the ice edge throughout the summer months. Furthermore, they recommended that the operator be required to shut down if ice encroaches within 15 miles of a prospect and the operator should be required to move to an ice-free prospect until the edge retreats.

Response: The spring lead restriction was designed to protect the nursery herds during the spring migration when the calves are very young and cow-calf pair movements might be restricted by ice cover. Once the ice has opened up, the walrus are much less restricted in their movements. Localized icebreaker activity within the summer range of walruses during the open water season should not affect their ability to move away from the disturbance. Evidence cited by Brueggeman et al. (1990) showed that walruses moved deeper into the pack ice to avoid icebreaking activity. This does not displace them to a habitat they do not normally use in the summer. On the Chukchi summering grounds most walruses are found within 20 km of the southern ice edge (Fay et al. 1984b). The Service finds this recommendation unduly restrictive; if information in the future shows that

such a condition is warranted, the Service will reconsider it.

Comment: Several commenters were concerned about the impact of drilling muds. One commenter stated that disposal of toxic drilling wastes poses a grave threat to arctic benthic communities and consequently to walrus. Based on the deficiency of information on the behavior, impacts and persistence of drilling wastes in arctic marine waters, and perfunctory understanding of important walrus habitats, they thought the Service's dismissal of this issue was completely unwarranted. Another commenter wanted to see industry remove drilling mud, cuttings, and other toxic elements that will be discharged. They were concerned about reduction in prey from contaminants and heavy metal accumulation in walrus. The Marine Mammal Commission (MMC) expressed concern that toxic substances in drilling muds and oil released into the environment in certain areas could contaminate the benthic fauna eaten by walrus, be accumulated in walrus, and pose a health hazard to Alaska Natives who eat walrus. The MMC recommended an assessment of the levels and trends of potentially hazardous contaminants in benthic fauna and walrus taken by Alaska Natives for subsistence purposes.

Response: The Environmental Protection Agency (EPA) regulates offshore drilling discharges through the issuance of National Pollutant Discharge Elimination System (NPDES) permits. The EPA establishes toxicity limits for effluent discharges offshore and prohibits the discharge of those effluent streams that exceed the established limits. The NPDES permits issued by EPA for arctic operations have special discharge limitations based on water depth and environmentally sensitive areas, monitoring, testing and reporting requirements, and special seasonal requirements and restrictions based on open-water and varying ice conditions.

Information is available on the effects of drilling muds and cuttings in arctic waters. A report titled, "Drilling Discharges in the Marine Environment," was compiled by the National Research Council's Marine Board (1983) to assess the fates and effects of drilling fluids in the marine environment. The document discusses the fates and effects issue in depth, and presents a comprehensive list of references used by the panel in compiling the report. A recent book, entitled Drilling Wastes (Engelhardt et al. 1989), includes a report on the localized, temporary accumulation of drilling muds discharged from man-made islands in the Canadian Beaufort Sea and a report on the lowered bioavailability of the metals in drilling mud barite. The EPA proposed new source-performance standards for the offshore oil and gas industry (56 FR 10664), partly because much new information has been collected regarding waste characterization, industrial practices, and environmental effects, and other associated areas.

As described in the draft Environmental Assessment for the proposed rule on incidental take, the disposal of wastes may affect the benthic communities. The Environmental Assessment concludes that this effect will be negligible, because discharges will occur only in very localized areas for temporary periods. Effects would be primarily from burial in the immediate vicinity of the drilling location. There also could be negligible effects to benthic feeders, such as walruses, from the bioaccumulation of contaminants (heavy metals) in the discharged muds and cuttings. The EPA has placed restrictions on the amount of mercury and cadmium in barite, a major constituent of drilling muds, that reduces the availability of these contaminants to the benthic communities and feeders.

Up to seven exploratory wells could be drilled in any given year in the Chukchi Sea, as projected in the MMS Environmental Impact Statements for Chukchi Sea Oil and Gas Lease Sales 109 and 126 (USDI 1987, 1990b). These documents present estimates on the maximum amount of drilling muds and cuttings that would be released from exploration drilling in a given year. The EPA (1990) estimated that discharges from exploratory drilling would not exceed applicable water-quality criteria outside of a 100-meter radius (or 0.03 square kilometers) around each discharge site in the Chukchi Sea exploration area. The MMS estimates that the drilling of all exploration, delineation and production wells will temporarily affect less than 1 percent of the benthic prey available to walruses in the sale area. This information confirms the Service's finding that the impacts from disposal of drilling muds and cuttings are negligible.

Impact on Subsistence Uses

Comment: The Service's finding that the proposed oil and gas exploration activities will not have an unmitigable adverse effect on subsistence uses is not supported by the record. Banning the takings during the spring migration does not provide support for the "no unmitigable adverse impact" finding. The submittal of a Plan of Cooperation does not ensure that adverse impacts will be mitigated. Finally, the lack of specific information concerning the impact of the proposed oil and gas exploratory activities upon subsistence uses precludes this finding.

Response: To determine that an unmitigable adverse impact on subsistence uses exists, two elements must be present. First, the impact resulting from the specified activity must be likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. This standard of determining impact does not require the elimination of adverse impacts, only mitigation sufficient to meet subsistence requirements. The 1986 amendments to the Act require that the specific regulations governing an activity include measures to ensure the least practicable adverse impact on the availability of marine mammals for subsistence uses. To that end the regulations require companies that are conducting the specified activity to prepare a plan of cooperation when submitting their request for a LOA.

The plan of cooperation states how the operator will work with affected Native communities and what will be done to avoid interference with subsistence hunting. The intent of the plan is to encourage those conducting the specified activity and the affected subsistence users to meet and develop mutually agreeable conditions which satisfy the needs of the activity and the requirements of subsistence users. This means that the Alaska Native communities will be brought into the planning process as early as possible. The Service will review the plan to determine if it is sufficient to avoid interference with the availability of walruses and polar bears for subsistence uses or to ensure that any adverse effects are properly mitigated. The plan must be approved before a LOA is issued; clarifying language to this effect has been added to this Final Rule in § 18.116, "Measures to ensure availability of species for subsistence." Added to this section is the provision that states: "The plan must be approved by the Service's Alaska Regional Director."

The prohibition for incidental take during the period in which walruses are migrating through the spring lead was developed to protect the nursery herds during the spring migration when the calves are very young and cow-calf pair movements might be restricted by ice cover. Protecting walruses during the time they are especially vulnerable to disturbance will help ensure that they will continue to be available to those subsistence users in Chukchi Sea communities. This condition received widespread support from Native organizations, the State of Alaska and from the public at community meetings. Many comments were received requesting that the provision that would allow taking prior to June 15 be deleted in order to protect subsistence. The State summed up the general tone of the comments by stating "(h)owever, in some places the notice indicates that taking may begin prior to June 15 if the FWS has concluded that the lead system is not identifiably intact. The way this is presented is confusing and confounds the assessment of probable impacts, especially for subsistence. For example, in a year with very light ice cover and an early breakup the lead might be determined to be no longer intact on June 1. If exploratory activities began on that date, impacts on subsistence at villages such as Point Hope could be major and perhaps unmitigable. The provision that would allow taking prior to June 15 should be deleted." The Service agrees and the rule has been changed to reflect this. Further discussion regarding effective dates is found in the response to comments on seasonal dates.

Specifying the number of animals avoiding or abandoning an area that would constitute an adverse impact is difficult. If appropriate and feasible, such standards will be established during the development of a LOA when the Service has received information on specific location and activity from the operator, as well as heard the concerns of the subsistence users. Since the standards would vary depending on the type of exploration activity and precise geographic location, they are not appropriate to these regulations.

Speculative Impacts

Comment: Varying comments were received regarding the issue of how speculative impacts should be treated in determining negligible impact. One commenter argued that speculative or conjectural effects should not be considered in evaluating impacts and that they should be eliminated. However, other commenters concerned about the limited data on the population dynamics of polar bears and walruses, thought that the Service should be cautious and consider all speculative impacts as well as information on other marine mammal species that might apply to walruses and polar bears.

Response: The Service concurs that caution should be employed when presenting those impacts that might be speculative or conjectural. However, a balancing test must be used:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determinations will be made based on the best available scientific information. 53 FR at 8474; accord, 132 Cong. Rec. S16305 (Oct. 15, 1986).

The Service recognizes the problems that exist between development interests and wildlife resource interests when analysis of negligible impacts includes impacts that might be speculative in nature. To resolve this difficult situation, the legislative history of the Act's 1986 Amendments endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact:

> The degree of certainty of occurrence required in these judgments should be inversely proportional to the resultant harm to the overall population. 132 Cong. Rec. S16305 (Oct. 15, 1986).

In applying this balancing test, the Service will continue to look at all possible impacts, both documented and speculative.

Level of Activity

Comment: The estimated level of activity, such as how many drill sites, the amount of support vessels, and the number of trackline miles covered during seismic exploration was taken from environmental impact statements issued by the MMS in connection with OCS lease sales in the Chukchi Sea. In their response to the Proposed Rule, the petitioners stated that the estimated levels of activity were too high for drilling activity, but too low for seismic activity. They stated that the Proposed Rule suggests that "as many as seven" wells might be drilled in any given year and that this is a misleading picture of the actual anticipated level of activity. At present, they stated that there are only four floating drilling units available for use in arctic conditions. Each of these units generally requires at least two ice-breakers during operations. Further, it is not likely that any more than two floating drilling units will operate simultaneously during any drilling season in the foreseeable future. Absent extremely unlikely developments, the petitioner predicts that it is virtually impossible for more than the four extant units to operate at any given time and at present, there are only two mobile, bottom-founded units available. The petitioner commented that while it may be theoretically possible for as many as six rigs of all types to operate during the same period, it is unlikely.

Conversely, the petitioners believe the estimates for seismic exploration were probably too low since they do not account for "3–D" surveys conducted in connection with exploratory drilling. The concern that seismic estimates were too low also was echoed by two other commenters.

Response: The statement in the Description of Activity from the Proposed Rule says that "(a)s few as two or as many as seven drilling units could be working in any given year in the Chukchi Sea." Seven drilling units are under the high-case assumption found in the MMS's Final Environmental Impact Statement for Lease Sale 109. The Service agrees that this number is high and unlikely to occur within the next five years. Only three floating drilling units currently are certified for U.S. operations, and no additional units are expected to become available during the next five years. However, in determining impact, the Service must evaluate the "total taking" expected from the specified activity in a specific geographic area. The applicant's anticipated taking from its own activities is only one part of the story; the total takings expected from all persons conducting the activities to be covered by the regulations must be determined. (54 FR 40342, September 29, 1989). To best assess the issue of total taking, the Service looked at the high-case estimates provided for in Lease Sale 109. The Service agrees that it is unlikely that seven drilling units would be working in the Chukchi Sea in one year but two to seven units is a rsasonable range to use to meet the Service's responsibility for examining total taking. Therefore, the Service will continue to use those levels estimated in the proposed rulemaking as the basis for its findings.

The Service has revised the discussion of the estimated level of

seismic surveys that will be conducted in the Chukchi Sea. The proposed rule presented the estimates for the shallow-hazard surveys but did not include the estimates for 3–D or deep penetration seismic surveys that occur after an exploratory well is drilled. The MMS estimated the extent of shallow-hazard seismic surveys for Chukchi Sea Lease Sale 109 at 7,979 trackline kilometers over the life of the lease. An additional 8,783 trackline kilometers of 3–D and deep penestration seismic data have been estimated to occur after the initial exploratory drilling in the Lease Sale 109 area (USDI 1987). The estimate for shallow-hazard surveys for Chukchi Sea Lease Sale 126 was 7,055 trackline kilometers for the base case with an additional 10,329 trackline kilometers of 3–D and deep penetration surveys (USDI 1990b). Although the trackline kilometer estimates for Lease Sales 109 and 126 are not entirely independent, the amount of overlap is difficult to calculate; therefore, for the purpose of this rule the Service will consider the estimates independent and thus additive. The estimated total of shallow-hazard surveys for the Chukchi Sea for the life of the leases is 15,034 trackline kilometers and that of 3–D and deep penetration is 19,112 trackline kilometers. The Environmental Assessment has been revised to reflect these changes. The Service has reexamined this new information and concluded that the "additive" impacts resulting from the additional activity will have a negligible effect on walruses and polar bears because seismic activity requires open water conditions that would normally preclude the presence of these species. Therefore, although there are additional trackline estimates, the Service believes that the impacts to walrus and polar bear populations resulting from the additional activity will continue to meet the negligible impact standard as defined in 50 CFR 18.27(c). However, as new information is developed through monitoring, reporting or research of the activities, the regulations may be modified, in whole or part, after notice and opportunity for public review.

Effective Dates

Comment: Many comments were received regarding the time period in which incidental take will be authorized. Most of the commenters were in support of the spring lead restriction and did not want to see any authorization before at least June 15. One commenter thought the proposed rule unnecessarily restricts the time period during which incidental take will be allowed, particularly the end date of October 15, even with extensions. They argued that restricting incidental take authorization after October 15 will not reduce effects on subsistence activities or availability of resources. Another commenter wanted to know why the fall migration did not deserve as much protection as the spring migration.

Response: Under section 101(a)(5) of the Act, the Service can allow the taking of small numbers of marine mammals incidental to a specified activity (other than commercial fishing) within a specified geographical area. For the Service to consider allowing an incidental taking, a written request for specific regulations must be submitted to the Service containing detailed information on the activity as a whole and impacts of the total potential take. The Service evaluates the impacts resulting from the activities. In this case the applicant, SWEPI, petitioned the Service for specific regulations during oil and gas exploration during the open water season in the Chukchi Sea. By implementing regulations to the Act, the Service is directed to determine if the taking will have a negligible impact on marine mammal populations and will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. The Service's analysis is bound by the request; in other words, the Service cannot assess impacts for exploration year round nor could it establish regulations for the Beaufort Sea because that is outside the range of the petitioner's request. The Service must respond to the scope of the petition for promulgation of regulations as it is presented.

Therefore, it is necessary to define when the open water season exists so that impacts can be analyzed for that time period and so that operators know during what time period authorization for incidental take will be issued. There is general agreement that the open water season is that period when sea ice does not cover the Chukchi Sea. The open water season, which is assumed to be represented by a 90-day drilling or operating period, (USDI 1990) usually occurs between June 15 and October 15. However, the end date can vary considerably from year to year.

It is not the Service's intent to be restrictive, without justification to resource or subsistence values. The Service agrees, after examining the existing information, that restricting incidental take permits after October 15 will not reduce effects on subsistence activities or availability of resources. However, the Service has a responsibility to prohibit authorizations outside the time period for which they have examined the scientific information and made a decision regarding negligible impact. The impact of activities to polar bears past November has not been examined or determined. Operations planned or conducted past the "open-water season" would be beyond the scope of this rule-making. Any taking, other than that specifically allowed by regulation, is a violation of the Act and subject to possible enforcement action. For this reason, it is to all parties' interest to define as fairly as possible when incidental take authorizations are to be in effect.

The Service has made the following decisions regarding the effective dates of the regulations. The regulations are effective for exploration activities during the open-water season which will be defined as that period from June 15 to November 30. Under the *optimal* melt-back conditions, a significant area of ice-free water (20 percent or more) can appear in the Chukchi Sea starting as early as the third week in June and persisting as late as the third week in November (Stringer and Groves 1985). Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea, and will notify the exploration companies and the Native communities when it has made this determination. In some years this date may be after June 15. For those years when ice conditions warrant continuing exploration activities past mid-October, closer cooperation will be required between the operator and the Service regarding the ice conditions, and walrus and polar bear encounters.

Each year the Service will use satellite photos of the spring lead system, consultations with the village of Point Hope, and aerial reconnaissance to determine when LOAs will become effective. Prior to the effective date, any activity within the spring lead system remains subject to the taking prohibitions of the Act. The Service did not determine that the fall migration of walruses required the same degree of protection as the spring migration. The fall migration of walruses occurs under different ice conditions. By October, in most years, new ice formation causes rapid southward advances of the pack ice. Walruses begin their migration southward at this time as well, however, they migrate mainly ahead of the ice. Therefore, their fall movements are not restricted by lead systems within the ice in that way that they are in the spring. In addition, the calves are older and have a layer of blubber for insulation

and so are capable of remaining in the water for much longer durations.

Comment: One commenter thought that it would be less than equitable if vessel traffic associated with oil and gas exploration were restricted during a period when other vessel traffic was allowed to operate in an unrestricted manner. If the Service is concerned that oil and gas exploratory activities may be staged utlizing ice-breaker led barge trains through the Chukchi Sea during a period when active ice breaking activity is required, the final rule should narrow its conditions to so state.

Response: It is not the Service's intent to undertake vessel traffic regulation. However, the Service must evaluate all impacts from the specified activity, whether they involve threats from vessel traffic, oil spills, sludge, drilling noise or other impacts. The "total taking" anticipated from the specified activity must pass the negligible impact test. 50 CFR 18.27(d)(3). Impacts from "contemporaneous" activities must also be considered (54 FR 40342, September 29, 1989). Therefore, although the Service does not regulate vessel traffic, navigation connected with oil and gas activities may, in certain instances, need to be restricted or conditioned in order to reach the negligible impact finding. In such a case, it would be the petitioners for the incidental take regulations who agree to such conditions in order to receive the incidental take authorization under section 101(a)(5) of the Act. The Service would not be directly regulating navigation, but would instead be regulating the taking of marine mammals by enforcing terms and conditions necessary to keep those takings at a negligible level. In this case, the spring lead restriction was designed to protect walruses and subsistence activities. The Service is concerned that oil and gas exploration in the Chukchi Sea will increase vessel traffic in the spring lead system when ice conditions may restrict walruses' ability to avoid the vessels. The Service declines to narrow the conditions and believes our position is clearly stated in the Final Rule. The Service has defined the time of year and conditions under which incidental takes will be allowed and reiterates there that prior to the effective date, any activity within the spring lead system will be subject to the taking prohibitions of the Act.

Monitoring and Reporting

Comment: Many comments were received regarding the monitoring and reporting requirement. One commenter stated that the objectives found in the Environmental Assessment went far beyond what might be legally or realistically expected of holders of LOAs. This commenter thought that a number of objectives involved research into the basic biology of the species and that much of this work is unrelated to the mandate that an applicant monitor the effects of exploration activities on walruses and polar bears. Another commenter stated that the legal required focus of monitoring is observable effects of the activities on walruses and/or polar bears while the activities are being conducted. He further stated that how "FWS will use such observational data to assess long-term or cumulative effects is an issue separate and apart from the basic monitoring requirement." However, he also commented that basic biological research should be encouraged or required only when it is essential to assess the effects of specific activities covered by a LOA. Another commenter reasoned that because the Service concluded that exploration activities will not have a more than negligible effect, then there is not a need for extensive monitoring of "long-term effects" or "regional and population levels."this commenter thought that the objectives should focus on whether there is a change in distribution of walruses and polar bears which is attributable to oil and gas exploration and to document the number of interactions between walruses and polar bears and oil and gas activities.

The MMC thought that it was not clear whether monitoring programs will be adequate to accurately determine the levels or manner of take, or the estimated levels of authorized activities. Without this they questioned whether the Service would have sufficient information to confirm that the authorized activities are having no more than a negligible impact. They recommended that any site-specific monitoring be accompanied by long-term monitoring programs to verify predicted effects and to detect any unforeseen effects of exploration on the distribution, abundance and productivity of marine mammals. The MMC also recommended that before issuing LOAs, the Service consult with the Alaska Department of Fish and Game and its own scientists to assess the adequacy of the existing database and programs to monitor the status of walrus and polar bear populations and, as necessary, design and implement additional programs to verify the predicted effects and detect any unforeseen effects of oil and gas exploratory activities on the distribution, abundance and productivity of those populations and their availability for subsistence use. An additional recommendation was to revise the proposed rule to reflect the distinction between the goals, objectives and primary tasks of site-specific and long-term population monitoring programs, and that the Service develop and provide to applicants specific guidelines for the design and implementation of monitoring programs.

The State also commented on the need for guidelines. They pointed out that it is important for monitoring programs to be properly designed and conducted. They recommended that applicants for LOAs be provided guidelines for monitoring program design, such as those the State has provided to SWEPI or those recently produced by the National Marine Fisheries Service. The North Slope Borough also suggested adopting these guidelines, especially the one criterion that states there is a need for monitoring disturbance and behavior before, during and after exposure to an activity to allow for comparing a control versus an impact area.

A few commenters felt that the proposed rule did not sufficiently detail the monitoring and reporting requirements and that it was not sufficient to say that applicants meet these requirements during the LOA process. Several people, particularly at the public meetings, urged the Service to ensure quality control in the monitoring design and proper peer review of the design and conclusions of the study. The MMC suggested that the Service and/or the applicants consider convening a "Quality Review Board" to provide review and recommendations for improving monitoring plan design, interpretation of results, and identification of data gaps and additional information needs. One commenter pointed out a need for synthesizing monitoring studies. Another recommendation was to require the monitoring plans to include a summary of the major results of previous monitoring and then establish new objectives. Another commenter disagreed with the statement in the rule that "(t)he Service also would coordinate with other agencies that require monitoring programs . . . to avoid duplication of data * * *".

Response: One of the primary purposes for the adoption of the Act was protecting and encouraging the growth of marine mammal populations to the greatest extent feasible commensurate with sound policies of resource management. Experience with the Act in the ensuing years served to identify certain problems associated with its implementation that warranted

attention. It was determined that a number of improvements were needed and these issues were considered by the Congress during reauthorization of the Act in 1981. The resulting reauthorization and amendment of the Act left intact its basic protective philosophy and provisions while clarifying certain definitions and provisions and modifying others to facilitate management efforts by Federal and State agencies. A significant addition was section 101(a)(5) which was established to govern other non-fishing-related types of incidental taking of marine mammals such as those associated with OCS exploration and development. The Secretary of the Interior is directed, among other things, to prescribe regulations pertaining to the monitoring and reporting of such taking. The inference of the requirement is that monitoring and reporting is required to help enable the Secretary to make the decision that the total taking during the specified time period will have a negligible impact on the species or stock. There is evidence that reducing the impacts of incidental take was also the intent of the monitoring and reporting requirement. In the House Report on a section by section analysis of the 1981 Amendments, Congress pointed out:

> Further, the Committee expects that persons operating under the authority of section 101(a)(5) shall engage in appropriate research designed to reduce the incidental taking of marine mammals pursuant to the specific activity concerned. H.R. Rep. No. 228, 97th Cong., 1st Sess. 20 (1981).

The Service believes it is the responsibility of the applicant to provide the required information and to demonstrate negligible impact since the applicant is requesting authority to take marine mammals and is the beneficiary of such authority.

In §§ 18.27(d) (vii) and (viii) (that deal with suggested means of mitigating and monitoring impacts) of the implementing regulations for section 101(a)(5) of the Act, the Service further spells out what information an applicant should expect to provide in an application for specific regulations. Sections 18.27(d) (vii) and (viii) require the applicant to provide:

> Suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and (viii) Suggested means of learning of, encouraging, and coordinating research opportunities, plans and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects. 50 CFR 18.27(d).

These implementing regulations were developed to reflect the intent of Congress when it amended the Act with section 101(a)(5). The Service believes that the objectives for monitoring presented in the Environmental Assessment and the Proposed Rule are within the guidance presented in the administrative record described above.

Because of the apparent confusion regarding the monitoring requirement, the Service will attempt to clarify the issue. A plan for monitoring the effects of exploration on walruses and polar bears will be required of all applicants requesting a LOA. The requirements for monitoring are likely to vary depending on the activity and the location. For example, a monitoring program that might be required of an operator planning exploratory activity from a drillship with accompanying ice-management and resupply activity will be different than the requirements of an operator planning a seismic data collection program. Activities that are not in areas known for the presence of walruses or polar bears will require far less extensive monitoring plans. For this reason it is not appropriate to put specific monitoring guidelines in the regulations. Applicants are strongly urged to develop plans in cooperation with the Service as early as possible.

The reason monitoring plans are stipulated in the Act is to ensure that the scientific basis for the "negligible impact" finding for species and the "no unmitigable adverse impact on the availability of such species for subsistence uses" finding can be verified as the activities proceed. To that effect the primary objective of monitoring is to determine the accuracy of the Service's earlier findings on the direct, indirect and cumulative effects of offshore oil and gas exploration activities on the survival and productivity of these species.

The basic elements of the monitoring programs will be to determine and report when, where, how and how many marine mammals, by species, age/size and sex are taken in the course of authorized exploration activities so as to verify the nature and level of take. Longer-term population monitoring programs must be developed to detect possible changes and trends in abundance, distribution and productivity of populations of affected species to confirm that the effects of the observed take continue to be negligible. Programs which are developed to address some basic biological questions necessary for understanding the relationships between exploratory activity and the species' needs are not necessarily the responsibility of the applicant.

The operator has a responsibility through monitoring to verify that authorized activities have negligible effects. The Department of the Interior's MMS is responsible for identifying adverse effects of OCS exploration and development in offshore water beyond State jurisdiction. The Service is responsible, under the Act, for assessing that incidental taking will have a negligible impact on walrus and polar bear populations and will not have an unmitigable adverse impact on the availability of the species for subsistence uses. The Outer Continental Shelf Lands Act, as amended, authorizes MMS to conduct environmental monitoring studies, including post-leasing studies, "in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the Outer Continental Shelf and the coastal areas which may be affected * * *" and "in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes." (43 U.S.C. 1346 (a)(1), (b)). The Service declines at this point to define specifically what information gathering should be assigned to which entity, believing instead that flexibility within the bounds of the law is in the interest of all parties.

Monitoring methods which may be used include, but are not limited to, aerial surveys, shipboard observations, acoustic studies and monitoring radio-tagged walruses and polar bears in the vicinity of the drill sites.

Monitoring programs will be reviewed annually and monitoring plans may be modified from year to year. The Service strongly concurs with those commenters who suggested that peer review would enhance monitoring plan designs as well as interpretation of results. The Service will make every effort to see that peer review is built into the LOA process.

As a result of comments, the Service has included in reporting stipulations in § 18.117(f) the provision that the Holder of a LOA and the Service shall meet and discuss the report each year. It was also added that the report must include a summary of the results from previous

monitoring studies conducted by the LOA Holder. This will help ensure synthesis of data from year to year.

Regarding the comment on duplication of data, the commenter was correct in saying that there is nothing wrong with a study being duplicated. However, the Sevice was referring to the possible unnecessary duplication of effort and data at the same exploration site, in the same season. For example, the National Marine Fisheries Service might require aerial surveys of whales and seals and the Service might require aerial surveys for walruses and polar bears. The Service would facilitate coordinating these surveys so that a separate plane is not needed for each monitoring program. Where more than one operator might be operating in adjacent survey areas, the Service would attempt to ensure that these operators were not duplicating efforts and providing the same data. The wording in the Environmental Assessment has been changed to more clearly state this intent.

Comment: Several persons commented on the language regarding observers in § 18.117 of the proposed rule. One commenter pointed out that proposed § 18.117(b) requires that "a qualified individual" be designated to observe the possible effects of the activity on walruses and polar bears, while proposed § 18.117(c) states that "(a) biologist approved by the * * * (Regional) Director should observe the behavior of these marine mammals to determine if they are being affected." This commenter thought that it might appear that only a biologist will qualify as an observer and that such a requirement is too rigid and unnecessary. Another commenter wanted to see only Service biologists involved in monitoring. Another stated that short-term anecdotal observations by industry observers does not constitute adequate standards for a monitoring program.

Response: The Service wishes to retain flexibility on the determination of who constitutes a qualified observer. The Service agrees that in some situations or locations the observer might not need to be a biologist. The Service reserves the right to determine who is qualified to conduct the required monitoring program and has revised § 18.117(b) and § 18.117(c) to eliminate redundancy and to be consistent in the language requiring a qualified observer approved by the Service.

Comment: One commenter thought that a required polar bear awareness and interaction plan, found in § 18.117(d) is not appropriate for these regulations because the specified activity is confined to "open water" exploration while the required plan would be for on-ice activities. Another commenter thought this section should be expanded to include more than on-ice activities in which a polar bear could gain access to the working surface. They pointed out that although it appears that most of the exploration will probably occur from drillships, the potential still exists to use artificial islands or other bottom founded structures that can be accessed by bears.

Response: As it is explained in other places in this document, the open water season does not preclude the presence of ice or the presence of polar bears. The purpose of the plans is to insure that lease operators identify and take steps as appropriate to avoid or minimize encounters with bears and to respond in ways which will minimize possible adverse impacts on both bears and people in the event that encounters do occur. This requirement serves to protect both polar bears and humans. It does not present an undue burden on the operator because if there is not a possibility of bear-human encounters there is not a necessity for preparing an interaction plan. The MMC convened a workshop in January 1989 to address concerns about the effects of increasing human activity in the Arctic region on polar bears and their habitat. The requirement under discussion is a result of recommendations that came out of this workshop. In addition, the MMC, in comments to the Proposed Rule, recommended that the Service require operators to record and report all sightings of, and interactions with, polar bears that occur at or near exploratory drilling sites, geophysical survey sites, or at the location of other support activities. The Service intends to require such conditions in the monitoring programs which are part of the LOA process.

The Service has changed the wording of § 18.117(d) in this Final Rule to clarify its intent and to reflect the concern of the commenters. This section now reads, "If the applicant plans any activities that may occur on drifting ice present during the open water season or will be drilling from a structure on which a polar bear could gain access to the working surface, the operator must develop a polar bear safety program and interaction plan."

Letters of Authorization

Comment: Several commenters took exception to the wording in § 18.118(a) of the proposed regulations which read, in part, that "(e)ach person or entity conducting an exploratory activity in the geographical area described in § 18.111 must apply for a Letter of Authorization for each geophysical survey and each drilling operation." Commenters thought that the mandatory nature of the wording was incorrect and that the person or entity must make the decision about whether to seek a LOA. In addition, one commenter thought the language could be construed to require a LOA as a precondition to conducting exploratory activities—a requirement which goes beyond the Service's authority under the Act.

Response: The Service agrees that the Act does not require an operator to have a permit before drilling but prohibits the operator from "taking" marine mammals without a LOA and provides sanctions if unpermitted takings occur. There is no requirement that an operator obtain incidental take authority if a take is unlikely. However, if any marine mammals are taken incidental to operations, the operator is potentially liable for violations of the Act. Congress intended the phrase "incidental, but not intentional" to mean accidental taking. Furthermore, the words "not intentional" should not be read to mean that persons who know there is some possibility of taking marine mammals incidental to other specified activities are precluded from proceeding under the authority of section 101(a)(5). H.R. Rep. No. 228, 97th Cong., 1st Sess. 20 (1981). The rule does not authorize oil exploration activities but authorizes the taking of marine mammals incidental to such activities. The Service revised the language of § 18.118(a) to reflect the distinction that an operator has the discretion to determine whether there is a likelihood of incidental take and therefore a need for a LOA. The language is revised to read: "(T)o obtain authorization for an incidental take of walruses or polar bears pursuant to these obligations, each person or entity conducting an exploratory activity in the geographical area described in § 18.111 must apply for a Letter of Authorization for each geophysical survey and each drilling operation."

Comment: One commenter suggested that the regulations should provide for additional modifications of LOAs as an alternative to withdrawal or suspension. In particular, it was suggested that the language in § 18.115 be changed to read, "Depending on the results of the evaluation, the Service could add, reduce, or eliminate conditions to the authorization or withdraw or suspend it."

Response: The Service concurs and has made the suggested changes to § 18.115.

Comment: One commenter stated that the rule should require applicants to

record and report the nature and level of activities actually undertaken. They went on to say that this requirement should be a function of monitoring plans.

Response: Applicants are required when applying for a LOA to include a description of the activity including the method to be used, the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity. This requirement is found in § 18.118(b)(3). It may be determined that a description of the activity is also appropriate in the monitoring plans.

Comments: One commenter pointed out that directions in § 18.118(a) of the Proposed Rule instructing applicants to send requests for LOAs to the Alaska Regional Director are inconsistent with the directions in 50 CFR 18.27(f) that require submittal of LOA requests to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Response: The Service agrees that this creates confusion for the applicant and the agency. In order to clarify this point, the Service will modify 50 CFR 18.27(f) to read, in part, that "Requests for Letters of Authorization shall be submitted to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, unless otherwise directed in the specific regulations."

Geographical Boundaries

Comment: As defined by the Proposed Rule, the specified activity of "oil and gas exploration activities" is much too broad and the geographical area of the Chukchi Sea is too large.

Response: It was the intent of Congress that both the specified activity and the specified region be narrowly identified so that the anticipated effects would be substantially similar. The Service believes the boundaries of the Chukchi Sea, as defined in these regulations, include similar characteristics both biological and otherwise, that make it an appropriate identification. Oil and gas exploration activities have been specifically defined in the rule and the LOA process requires detailed descriptions of activities and locations. Since individual operators must request a separate LOA that includes a requirement for a specific monitoring plan and a specific plan for cooperation with Native communities, the Service will have the opportunity to review and analyze each activity on its own merit in a more limited geographical area.

Permissible Taking

Comment: One commenter thought that the definition of "permissible taking" should not include unpermitted discharges of oil, physical obstruction or shooting.

Response: The Service disagrees with the first point made by this commenter that take from oil spills should not be allowed. The Service does not mean to convey the idea that it condones taking of walruses and polar bears by oil spills. However, it must be recognized that the Service, in evaluating a request for incidental take regulations under section 101(a)(5) of the Act, must examine the total taking that may result incidental to the specified activity. 50 CFR 18.27(d)(3). If that level of total taking will have a negligible impact on the marine mammal species or stock (and if such taking will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses), then the specified activity is eligible for the incidental take exception of section 101(a)(5) so long as the conditions promulgated by the Service are followed. The Service's role under section 101(a)(5) is not to redefine the specified activity; rather, it is to evaluate the total taking anticipated from that activity to determine whether it meets the negligible impact test. If that test is passed, the activity is eligible for the exception to the taking moratorium and prohibition under the Act for all incidental take. See 16 U.S.C. 1371(a), 1372(a). On the other hand, if the total taking represents more than a negligible impact to an affected marine mammal species or stock, then incidental take regulations can not be issued and the prohibitions of the Act remain in place. However, neither the Act nor its implementing regulations specifically preclude takes of marine mammals as a result of oil spills, and for the Service to attempt to preclude such takes from the definition of "permissible takings" would go beyond our current legal authorities.

In the preamble of the Proposed Rule, the Service considered the issues of blowouts and major oil spills. It was found that, to date, there had been no oil spilled as a result of a blowout during exploratory drilling on the OCS. The Service initially determined that the probability of a blowout during exploratory drilling on the OCS was extremely remote and the probability of a major oil spill occurring from such a blowout was even more remote. (See response to comments on oil spills.) However, as stated in the proposed rule and reiterated here, "in the event of a catastrophic spill, the Service would reassess the impact to the population and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act." (56 FR 7652 (February 25, 1991).) A catastrophic oil spill would not be eligible for treatment under the "small take" provisions of section 101(a)(5) of the Act if the impact of the spill had a significant effect on rates of recruitment and survival. Only insignificant impacts on population levels and trends can be treated as negligible. If incidental take authorization is exceeded, the activity must be reevaluated. If the activity continued during such a reevaluation, then any resultant taking would be subject to penalties under the Act.

This commenter does not agree that the definition of permissible take should include physical obstruction. They stated further that if the activities will, in fact, be conducted only during the open water season there is no need to include takings from ice management activities within the definition of permissible take. Incidental take regulations will be in effect during the open water season and this should serve to minimize the possibility that takes might occur as a result of physical obstruction or ice management activites However, this does not guarantee that such takes will not occur. Although it is referred to as an open water season, broken pack ice exists within the open water zone. This ice is moving, floating ice which is dynamic due to wind and currents. The presence of floating ice requires ice management activities during the open water season and the Service believes that takes from these activities cannot be precluded from incidental take authorizations.

As regards the issue of shooting in the definition of "permissible taking," such takings are not anticipated incidental to the specified activity and they are not included in either the Proposed or this Final Rule.

Comment: One commenter wrote that, "The regulations fail to set forth permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species, on the availability of the affected species for subsistence uses and requirements pertaining to the monitoring and reporting of takings." They further stated that, "The regulations set forth only permissible methods of taking, but fail to include prohibition [sic]; means of effecting the least practicable adverse impact on affected species; their availability for subsistence uses; and monitoring and reporting requirements."

Response: The Service disagrees with both statements. Section 18.113 in the Proposed Rule considered permissible methods that would be permitted during exploration, while § 18.114 addressed prohibitions. These sections are included in the final rule; additionally, a new condition has been added to § 18.114 of the final rule that prohibits intentional lethal takes of polar bears.

Criminal Liability

Comment: One commenter argued against any interpretation of section 101(a)(5) of the Act that would exempt persons from the criminal provisions of the Act. They cited the following language from the Proposed Rule as reason for their concern:

> This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize take of walruses and polar bears by oil and gas exploration companies and thereby exempt them from civil and criminal liability. 56 FR 7654, February 25, 1991.

Response: The statement cited by the commenter applies to potential takings implications that are analyzed under Executive Order 12630 of March 15, 1988. This Executive order is entitled "Governmental Actions and Interference With Constitutionally Protected Property Rights," and is commonly referred to as the "Takings Executive Order." The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides an orderly process for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have a confiscatory impact on constitutionally protected property rights, have also reaffirmed that, under certain circumstances, governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

The purpose of Executive Order 12630 is to assist Federal agencies in undertaking reviews to evaluate the effect of their administrative, regulatory and legislative actions on constitutionally protected property rights. In this regard, the Service has determined that its regulatory action will not result in taking away any operator's oil and gas lease(s). In fact, a contrary argument can be made that this action, as provided for in section 101(a)(5) of the Act, actually enhances oil and gas operators' ability to avail themselves of the property rights that convey with oil and gas lease purchases.

As regards the commenter's argument that section 101(a)(5) of the Act does not grant the Service authority to exempt persons from the criminal provisions of the Act, the Service disagrees. Section 101(a)(5) of the Act states that the Secretary shall allow incidental, but not intentional, taking of marine mammals by citizens while engaging in a specific activity if certain determinations are made and actions taken. Section 101(a)(5) does not contain specific language exempting petitioners from civil and criminal liabilities under the Act. However, sections 101(a) and 102(a) of the Act clearly provide that incidental takings that result from activities that are conducted consistent with the requirements of section 101(a)(5) are exempt from the taking moratorium and prohibitions of the Act. This is not an unlimited exemption; the operators must: (1) Carry out their stated intentions and plans (as outlined in their applications for specific regulations and LOAs), and (2) comply with provisions of applicable regulations and LOAs issued by the Service. Thus, any takings of marine mammals that occurred during activities that were being conducted in compliance with provisions established to govern such activities would not subject operators to civil or criminal penalties under the Act. This does not mean that holders of LOAs will be absolved of civil or criminal liability under the Act for takes that result because they did not abide by their stated commitments and provisions of regulations and LOAs. In fact, the regulations are clear that any takings of marine mammals resulting from an operator's failure to abide by the terms and conditions of the incidental take regulations and the LOAs may subject the operator to penalties under the Act. See 50 CFR 18.27(f)(7). Additionally, and as provided for in the Act, the Service could reassess impacts to marine mammal populations and subsistence needs, and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act.

Environmental Assessment or Environmental Impact Statement

Comment: The Service should prepare an Environmental Impact Statement (EIS) rather than an Environmental Assessment (EA) before it issues a final rule.

Response: The Service found through preparation of an EA that the action will not significantly affect the quality of the human environment, thus making a "Finding Of No Significant Impact—FONSI." If an EA results in a FONSI, no additional documents are required by the National Environmental Policy Act (NEPA). In addition to being a NEPA document, the EA served to document the Service's analysis of whether the proposed activity has only a negligible impact on a species or stock and does not have an unmitigable adverse impact on subsistence users.

One commenter appeared to confuse the potential impacts upon the human environment from oil and gas exploration with the action proposed by the Service, i.e. allowing incidental taking during oil and gas exploration. Oil and gas exploration may have a significant effect upon the human environment and the MMS prepared EISs for the Chukchi Sea oil and gas lease sales (USDI 1987, 1990b). The Service stands by its decision that the regulation does not significantly affect the quality of the human environment and, therefore, the preparation of an EIS is not required.

Comment: The Service should consider the alternative of issuing the regulations for only a trial basis, e.g., for two years instead of five.

Response: The suggestion that the Service consider issuing incidental take regulations for a shorter period (than the maximum period of five consecutive years provided for in the Act) is based on the assumption that the lack of information justifies issuing the regulations for only a trial basis. The mechanisms are already in place to withdraw incidental take authority should the impacts demand such action. Congress has already addressed the possibility of unanticipated adverse impacts:

> The Secretary shall withdraw or suspend for a time certain (either on an individual or class basis as appropriate) the permission to take marine mammals under Subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds * * * that the taking * * * is having, or may have, more than a negligible impact on the species or stock * * *" 16 U.S.C. 1371(a)(5)(B)

In addition, the Service's implementing regulations clarify that incidental take authority can be revoked through the LOA process regardless of the period covered by the regulation authorizing such take. 50 CFR 18.27(f).

Comment Periods

Comment: Under the Proposed Rule the determination that the taking will be conducted so as to minimize the impacts will not be made until consideration of a

specific request and issuance of a LOA. However, there is no prior public review of a specific taking request and no opportunity to comment on whether the method of taking will in fact minimize any adverse impacts of the taking. The Final Rule should be revised to provide for an opportunity to review and comment on specific proposed survey and exploratory activities before issuance of a LOA.

Response: The Act does not require a public comment opportunity for applications for LOAs. Rather, the Service has stated its intention (in 50 CFR 18.27(f)(1)) to process LOAs within 30 days of receipt of the application. The Service will notify interested parties, such as affected coastal communities, the State of Alaska, the Eskimo Walrus Commission and the Marine Mammal Commission, regarding receipt of requests for LOAs. In addition, the Service will make every effort to see that monitoring plans and subsequent reports be made available for peer review as requested by several commenters. Notice of issuance of LOAs will be published in the **Federal Register.**

Effective Date of Rule

In accordance with 5 U.S.C. 553(d)(1), the Service has determined that this rule should be made effective on June 14, 1991. This Final Rule is considered to be a substantive rule, the provisions of which relieve a restriction on oil and gas exploration in the Chukchi Sea by authorizing incidental takes of polar bears and walruses under provisions of the Act. Any delay in the effective date beyond June 14, 1991 which would likely prevent the timely issuance of LOAs before the start of the open water season in the Chukchi Sea, could subject operators to penalties as provided in the Act if they were to conduct activities that resulted in incidental takes of polar bears or walruses.

Required Determinations

The Service prepared an Environmental Assessment (EA) for this Final Rule and concluded in a Finding of No Significant Impact (FONSI) that there would be no significant impact on the human environment as a result of the action. A copy of the EA and FONSI may be obtained from the individual identified above in the section entitled, **"FOR FURTHER INFORMATION CONTACT."**

Through preparation of a Determination of Effects of Rule, the Department of the Interior has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has also been determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors, conducting exploration activities in Alaska, have been identified as the only likely applicants under the proposed regulations. These potential applicants have not been identified as small businesses. The Determination of Effects on this rule is available from the individuals identified above in the section entitled, **"FOR FURTHER INFORMATION CONTACT."**

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it authorizes take of walruses and polar bears by oil and gas exploration companies and thereby exempts them from civil and criminal liability.

The collections of information contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070.

A complete list of the references cited in the preamble of this rule is available from the individuals identified above in the section entitled, **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is amended as follows:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows: 16 U.S.C. 1361 *et seq.*

§ 18.27 [Amended]

2. Subpart C—General Exceptions, § 18.27(f)(1) is amended by inserting at the end of the second sentence immediately after "* * * 20240" the phrase ", unless otherwise directed in the specific regulations."

3. Subpart I is added as follows:

Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

§ 18.111 Specified activity and specified geographical region.
§ 18.112 Effective dates.
§ 18.113 Permissible methods.
§ 18.114 Prohibitions.
§ 18.115 Level of activity.
§ 18.116 Measures to ensure availability of species for subsistence.
§ 18.117 Requirements for monitoring and reporting.
§ 18.118 Letters of Authorization.
§ 18.119 Information collection requirements.

Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

§ 18.11 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental, but not intentional, taking of walruses and polar bears by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration in the Chukchi Sea off the coast of Alaska. For purposes of this rule the Chukchi Sea is defined by a north-south line at Barrow and includes all marine waters west of Barrow, east of the US/USSR date line and north of the Bering Strait. The geographical region includes Alaska state waters and Outer Continental Shelf waters that have been leased for exploration or that are being considered for leasing. The activities include geophysical surveys and exploratory drilling and support operations, such as ice-breakers, support vessels and aircraft.

§ 18.112 Effective dates.

Regulations in this subpart are effective for a 5-year period from June 14, 1991 through June 14, 1996 for exploration activities during the open-water season which will be defined as that period from June 15 to November 30. Section 18.118(a)(2) will be effective from November 1, 1991, through June 14, 1996. These regulations do not authorize the taking of walruses or polar bears during the period in which the spring lead system is identifiably intact as a marine mammal migratory corridor. Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea, and will notify the exploration companies and the Native communities when it has made this determination. In some years this date may be after June 15. For those years when ice conditions warrant continuing exploration activities past October 15, coordination will be required by the operator with the

Service regarding the ice conditions and walrus and polar bear encounters. Letters of Authorization must be renewed annually.

§ 18.113 Permissible methods.

(a) The incidental, but not intentional, taking of walruses and polar bears by U.S. citizens holding a Letter of Authorization is permitted using the following methods for exploration:

(1) Geophysical surveys including shallow hazard and acoustic surveys; and

(2) Exploratory drilling including ice-breakers, support vessels and aircraft.

(b) The methods and activities identified in § 18.113(a) must be conducted in a manner that minimizes to the greatest extent possible any adverse impacts on walruses and polar bears, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to that activity and location.

§ 18.114 Prohibitions.

(a) The incidental take of walruses and polar bears is not authorized during the period in which walrus are migrating through the spring lead at a given location. The lead system in the Chukchi Sea is located in the shear zone between the shorefast ice and offshore pack ice. (See § 18.112.)

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of the Letters of Authorization is prohibited.

(c) No intentional lethal take of polar bears or walruses is authorized.

§ 18.115 Level of activity.

When Letters of Authorization are requested each year, the Service will determine whether the level of activity identified in the requests exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is higher, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the higher level of activity. Depending on the results of the evaluation, the Service could add, reduce, or eliminate conditions to the authorization or withdraw or suspend it.

§ 18.116 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies what measures have been, and will be, taken to minimize any adverse effects on the availability of walruses and polar bears for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The plan must be approved by the Service's Alaska Regional Director. The applicant must contact affected subsistence communities to discuss potential conflicts with the siting, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that exploration activities do not interfere with any subsistence hunt and/or that any adverse effects on the availability of walruses and polar bears are properly mitigated.

§ 18.117 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the Service and other designated Federal, State, or local agencies having legal authority, to monitor the impacts of oil and gas exploration on walruses and polar bears.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the effects of exploration activities on walruses and polar bears. The observer must be approved by the Service's Alaska Regional Director.

(c) When applying for a Letter of Authorization, the applicant must include a plan to monitor the effects of the activity on walruses and polar bears and on their availability for subsistence use. This plan, which must be approved by the Service's Alaska Regional Director, should identify what survey techniques will be used to determine the movement and activity of walruses and polar bears near the exploratory sites including migration and other habitat uses, such as feeding. A qualified observer should observe the behavior of these marine mammals to determine if they are being affected. The requirements for monitoring plans will vary depending on the activity, the location, and the time.

(d) If the applicant plans any activities that may occur on drifting ice present during the open water season or will be drilling from a structure on which a polar bear could gain access to the working surface, the operator must develop a polar bear safety program and interaction plan.

(e) At its discretion, the Service may place an observer on board drillships, aircraft, icebreakers or other support vessels to monitor the impact of exploration activities on walruses and polar bears.

(f) The Holder of a Letter of Authorization must submit a report to the Service's Alaska Regional Director within 90 days of the completion of any exploratory activities. The Holder and the Service shall meet and discuss the report each year. This report must include the following information.

(1) Dates and types of activity.

(2) Dates and locations of any activities related to monitoring the effects of exploration on walruses and polar bears;

(3) Results of the monitoring activities including an estimate of the actual level of take;

(4) Results of behavioral, feeding, or population studies; and.

(5) An annual synthesis of results and a summary of past reports.

§ 18.118 Letters of Authorization.

(a)(1) To obtain authorization for an incidental take of walruses or polar bears pursuant to these regulations, each person or entity conducting an exploratory activity in the geographical area described in § 18.111 must apply for a Letter of Authorization for each geophysical survey and each drilling operation.

(2) The application must be submitted to the Service's Alaska Regional Director at least 90 days before the activity is scheduled to begin.

(b) When an application for a Letter of Authorization is submitted, it must include the following:

(1) A plan to monitor the behavior and the effects of the activity on walruses and polar bears;

(2) A cooperation plan which describes the measures taken to mitigate any potential conflicts between the proposed activity and subsistence hunting; and,

(3) A description of the activity including the method to be used, the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity.

(c) In addition to the provisions of § 18.27(f), any withdrawals or suspensions, either on an individual or class basis, of the Letters of Authorization will be made only after notice and opportuntiy for public comment.

(d) The requirement for notice and public review in § 18.118(c) will not apply if the Service determines that an

emergency exists which poses a significant risk to the well-being of the species or stocks of walruses or polar bears.

§ 18.119 Information collection requirements.

The collections of information contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. It is necessary to collect the information in order to describe the proposed activity and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information will be used to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization. Response is required to obtain a benefit.

For the first year of the 5 year period covered by this final rule, the public burden associated with this requirement is estimated at 574 hours including 334 hours to complete the application for specific regulations, 40 hours to complete five applications for Letters of Authorization, 160 hours to comply with recordkeeping requirements associated with five Letters of Authorization, and 40 hours to complete required annual reports. From the second through the fifth years, the public burden is annually reduced to 240 hours because an application for specific regulations is not required. Direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 224 ARLSQ, 1849 C Street NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

Dated: June 6, 1991.

Suzanne Mayer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–14165 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the remaining share of the total allowable catch amount (TAC) for sablefish allocated to hook-and-line gear in the West Yakutat District of the Eastern Regulatory Area (WYK) of the Gulf of Alaska for the 1991 fishing year is needed as a bycatch amount to support directed fisheries in that area for remaining groundfish species. The Secretary of Commerce is prohibiting further directed fishing for sablefish by vessels using hook-and-line gear in the WYK. This action is necessary to prevent the hook-and-line share of sablefish in that area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving sablefish stocks.

DATES: Effective from 12 noon, Alaska local time (A.l.t.), on June 10, 1991, through December 31, 1991. Comments are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. The TACs for target species and the "other species" category are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1991 TAC specified for sablefish in the WYK District is 4,050 mt (56 FR 8723; March 1, 1991). The portion of that TAC assigned to hook-and-line gear is 3,850 mt.

Under §§ 672.20(c)(2) and 672.24(c)(3)(i), if the Regional Director determines that the share of the sablefish TAC assigned to any type of gear in any regulatory area or district is likely to be reached, the Regional Director may establish a directed fishing allowance. In establishing a directed fishing allowance, the Regional Director shall consider the amount of sablefish that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for sablefish in the specified regulatory area or district by that gear type.

The Regional Director has determined that the remaining hook-and-line gear share of sablefish in the WYK District of the Eastern Regulatory Area, 195 mt, will be necessary as bycatch to support remaining groundfish fisheries in that district. With this action the Regional Director is establishing a directed fishing allowance of 3,655 mt for the WYK and is prohibiting directed fishing for sablefish taken with hook-and-line gear in the WYAK District of the Eastern Regulatory Area, effective 12 noon, A.l.t., June 10, 1991. After the closure, in accordance with § 672.20(g)(2), amounts of sablefish retained on board hook-and-line vessels in the WYK District of the Eastern Regulatory Area at any time during a trip must be less than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under §§ 672.20 and 672.24 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive harvest of sablefish by hook-and-line gear that will occur if amounts of the sablefish TACs that are allocated to hook-and-line gear are exceeded and retention of sablefish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 10, 1991.

Richard H. Schaefer,

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

[FR Doc. 91–14125 Filed 6–10–91; 4:28 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 115
Friday, June 14, 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 TRANSPORTATION

Federal Aviation Administration
14 CFR Part 39

[Docket No. 91-CE-20-AD]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingten Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Fairchild SA226 and SA227 series airplanes. The proposed action would require a one-time modification of the engine power lever flight idle detent arms and cover assembly. It has been reported that significant wear has caused improper operation of the engine power control levers on the affected airplanes. The actions specified in this AD are intended to prevent improper operation of the power lever flight idle detent arms, which could result in loss of control of the airplane.

DATES: Comments must be received on or before August 9, 1991.

ADDRESSES: Fairchild Aircraft Service Bulletin (SB) Numbers 226-76-008 and 227-76-002, both issued January 15, 1991, revised May 9, 1991, that are discussed in this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-20-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 am. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Ms. Alma Ramirez-Hodge, Aerospace Engineer, Fort Worth Airplane Certification Office, DOT, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 624-5147.

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. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-20-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Recently, a Fairchild Model SA226-T(B) airplane experienced a loss of control during initial climb after takeoff. A witness reported that as the airplane climbed to an altitude of 50 to 100 feet, it yawed slightly to the right and then rolled rapidly to the right. The airplane continued past the inverted position, then descended and struck the ground, left wingtip first. The crew of the airplane was involved in a training flight that was to emphasize engine-out procedures.

The subsequent investigation by the National Transportation Safety Board (NTSB) revealed significant wear on each power lever reverse gate detent arm. The wear was located on the portion of the arm that contacts the flight idle stop, which is designed to prevent inadvertent travel of the power lever into the beta and reverse ranges. The NTSB believes that the rapid right roll that led to the in-flight loss of control was precipitated by the inadvertent movement of the power lever into the beta range as the instructor retarded the power lever to the flight idle detent to simulate a right engine failure.

FAA service difficulty records indicate several reports of worn power lever flight idle detent arms over the last five years. Service records also show that a significant number of detent arms on the affected airplanes have been replaced because of excessive wear.

The manufacturer, Fairchild Aircraft, has developed design modifications for the flight idle detent arms that will help prevent excessive wear. These improved parts are designed to prevent an inadvertent movement of the power lever into the beta range as the lever is retarded to the flight idle detent stop. Fairchild SB Numbers 226-76-008 and 227-76-002, both issued January 15, 1991, revised May 9, 1991, contain the instructions for accomplishing this modification.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent improper operation of the power lever flight idle detent arms. Since the condition described is likely to exist or develop in other Fairchild SA226 and SA227 series airplane of the same type design, the proposed AD would require a one-time modification of the power lever detent arms and cover assembly in accordance with the instructions in Fairchild SB No. 226-76-008 and Fairchild SB No. 227-76-002, whichever is applicable.

It is estimated that 770 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $214 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $228,305.

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Fairchild (formerly Swearingten Aviation Corporation): Docket No. 91–CE–20–AD.

Applicability: The following Model airplanes and serial numbers, certificated in any category:

Model	Serial numbers
SA226–T	T201 through T275, and T277 through T291.
SA226–T(B)	T(B)276, and T(B)292 through T(B)417).
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.
SA227–TT	TT421 through TT541.
SA227–AT	AT423 through AT695.
SA227–AC	AC406, AC415, AC416, and AC420 through AC777.
SA227–BC	BC762, BC764, BC766, and BC777.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent improper operation of the power lever flight idle detent arms, accomplish the following:

(a) Modify the power lever detent arms and cover assembly in accordance with the instructions in Fairchild Service Bulletin 226–76–008 or 227–76–002, both issued January 15, 1991, revised May 9, 1991, as applicable.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, DOT, FAA, Fort Worth, Texas 76193–0150. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 4, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14173 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 91–NM–98–AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3–30 and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3–30 and SD3–60 series airplanes, which would require locking the left and right low pressure (LP) levers in the open position using securing wires, and revising the Airplane Flight Manual (AFM). This proposal is prompted by reports that the LP lever, instead of the crossfeed lever, had been shut. This condition, if not corrected, could result in inadvertent engine shutdown.

DATES: Comments must be received no later than August 5, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–98–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. 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. Woodford Boyce, Standardization Branch, ANM–113; telephone (206) 227–2137. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–98–AD." The

post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Short Brothers Model SD3–30 and SD3–60 series airplanes. There has been a recent report of a pilot inadvertently shutting off the low pressure (LP) lever on a Model SD3–60 series airplane, instead of moving the fuel crossfeed lever. This resulted in inadvertent shutdown of one engine during flight. Since the fuel crossfeed levers and LP levers are installed similarly on both the Model SD3–30 and Model SD3–60 series airplanes, the potential exists on both models for inadvertent operation of the LP levers. This condition, if not corrected, could result in inadvertent engine shutdown.

Short Brothers has issued Shorts Service Bulletins SD330–28–35 and SD360–28–20, both dated February 22, 1991, which describe procedures to lock the left and right LP levers in the open position using securing wires. The service bulletins refer to certain revisions to the Airplane Flight Manual (AFM) related to procedures for engine and propeller emergencies. The United Kingdom CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require locking the left and right LP levers in the open position using securing wires in accordance with the service bulletins previously described, and revising the FAA-approved AFM in accordance with the revisions referred to above.

It is estimated that 120 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,800.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [AMENDED]

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

Short Brothers, PLC: Docket No. 91–NM–98–AD.

Applicability: All Model SD3–30 and SD3–60 series airplanes, certificated in any category.

Compliance: Required within 120 days after the effective date of this AD, unless previously accomplished.

To prevent inadvertent engine shutdown, accomplish the following:

(a) Lock the left and right low pressure (LP) levers in the open position using securing wires, in accordance with Shorts Service Bulletins SD330–28–35 (for Model SD3–30 series airplanes) or SD360–28–20 (for Model SD3–60 series airplanes), both dated February 22, 1991.

(b) Following accomplishment of the modification required by paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting the following amendments, as applicable:

(1) For Model SD3–30 series airplanes:

SBH3.3 Amendment p/16

SBH3.6 Amendment p/12

(2) For Model SD3–60 series airplanes:

SB4.3 Amendment p/19

SB4.6 Amendment p/12

SB4.8 Amendment p/14

(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 Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on June 5, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–14172 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 399

[Docket No. 47581, Amdt. 92]

Unfair Competition by Commonly Owned Carriers in Alaska

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes to amend part 399 of its regulations to state that it will be the Department's policy to regard it as an unfair method of competition under section 411 of the Federal Aviation Act for an individual or entity to own multiple air carriers that engage in direct competition in the same city pair market within the State of Alaska with the effect that the multiple carriers, taken together, receive a greater proportion of the mail tendered for transport by the United States Postal Service, under its present regulations, than the proportion received by any individual carrier serving the same market.

DATES: Comments must be received on or before August 13, 1991.

ADDRESSES: Comments should be directed to the Documentary Services Division, Docket 47581, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 47581. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date will be considered by the Assistant Secretary for Policy and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in docket 47581. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

Section 411 of the Federal Aviation Act of 1958, as amended (72 Stat. 769, 49 U.S.C. 1381) ("the Act"), empowers the Department to investigate allegations of unfair methods of competition by air carriers in providing or selling air transportation.

The Department recently has received correspondence from two Alaskan air carriers that hold certificates of public convenience and necessity under section 401 of the Act in which they brought to our attention certain operations being conducted by two commonly owned certificated air carriers which allegedly enable them to gain an unfair advantage over their competition. The two related carriers were reported to be serving the same Alaskan markets with the result that, together, they receive a disproportionate share of the mail which the U.S. Postal Service (USPS) tenders for transport equitably to all eligible certificated carriers serving the market. The parent of the two related carriers also owns a third carrier whose certificate authority, and thus its ability to operate, has not yet been made effective by the Department. The third carrier has published a prospective schedule of service in direct competition with the two related carriers.

In the 1970's, the USPS created a new mail classification, non-priority bypass mail, to facilitate bulk shipments from the hubs of Anchorage and Fairbanks to the Alaskan bush villages. The term "bypass mail" is defined in the U.S. Postal Service Manual as "bulk parcel post, which is so prepared as not to require handling in a USPS facility," (as distinguished from routine letter and package mail which must be processed through the postal facilities). The frequency of bypass mail shipments ranges between several times weekly for larger villages to a few times a month for smaller points.

In 1988, an amendment was added to section 5402 of the U.S. Postal Service statute (39 U.S.C. 5402) which provides that, for transporting non-priority bypass mail to any point served by more than one carrier in the State of Alaska, the Postal Service shall require an air carrier to hold a certificate of public convenience and necessity under section 401 of the Act. In addition, the statute requires that in order for a carrier to be selected to provide such bypass mail transport, it must have provided scheduled service in Alaska for at least 12 months preceding selection, must operate at least three scheduled flights per week to the point specified, and must adhere to its schedule to the best of its ability.

The USPS assigns bypass shipments to each eligible carrier in a market on an "equitable tender" basis, which results in each carrier receiving approximately an equal share of the bypass mail in each market served. Within each class of carrier service (mainline or interline bush), the size of the carrier's operation, the number of flights provided in the market (beyond the minimum three per week), the type of aircraft used, or its cargo or passenger capacity are not determining factors in allocating bypass mail shipments.

For the typically small certificated carriers serving the Alaskan interior, mail transport, particularly bypass mail, is a principal source of revenue. USPS statistics show that bypass mail constitutes about 70–75 percent of all intra-Alaska mail. According to the USPS Annual Report of Intra-Alaska Mail Service, the six certificated bush carriers operating out of Fairbanks, for example, received $3.8 million in FY 1989 and $5.4 million in FY 1990 from the carriage of mail. As calculated from carrier reports filed with the Department, these totals represent 31 percent and 39 percent, respectively, of their annual income in those years. Therefore, the bush carriers competing for these shipments are particularly alert for activities by competitors which will circumvent the objectives of the equitable tender system presently in use by the USPS.

The Department investigated the situation described by the complainants. Flight schedules published for the two operating related carriers showed that, as of the end of January 1991, each provided one round-robin flight [1] on weekdays between Fairbanks and the same six villages, one carrier operating the route in the morning and the other in the afternoon. Both carriers also provide service to another common point, one carrier serving five days per week, the other three days per week. The third nonoperating carrier proposes to offer five flights per week to a point already served by the other two.

The three companies, which are based in Fairbanks, are commonly owned by a holding company.[2] One of the two operating carriers as well as the non-operating company are single-pilot operations, which are not required by the Federal Aviation Administration to maintain all of the technical management positions or meet certain other operational requirements imposed upon larger carriers. Often, because of non-availability of the pilot, the operating single-pilot carrier has cancelled flights and used the services of a sister company or another carrier to complete its flight obligations. Moreover, although each has its own printed ticket and waybill forms, the carriers have combined their operations to a great extent. For example, they not only share certain officers and directors, but they also utilize the same administrative and maintenance facilities, aircraft, and personnel.

[1] Round-robin service consists of a multiple-stage flight to several points with a return to the point of origin.

[2] For purposes of this policy statement, "commonly owned" air carriers are those that are solely owned by the same stockholders or holding company or whose stockholders own more than 10 percent of the stock of another air carrier.

We do not know what motivated the parent company to establish two or three separate certificated carriers which directly compete against one another; however, it is clear that such duplicate scheduling results in the two (and perhaps soon the three) commonly owned carriers together receiving double (or triple) the share of the bypass mail tendered for transport in each market. For example, if there were five carriers serving a market, each would receive an equitable share (approximately 20 percent) of the bypass mail, with the three related carriers being eligible for about 60 percent of it.

We do not intend to preclude an air carrier from acquiring an interest in another carrier or from forming cooperative operating agreements. However, we do believe it to be an unfair method of competition under section 411 of the Act for an individual or entity to create or acquire multiple certificated air carriers which compete directly in an Alaskan city pair market so that the carrier "family" receives an inordinate share of the mail revenues at the expense of other carriers competing in the same market.[3] For purposes of this policy statement, we deem city pair markets to include points served directly or indirectly, as terminal points or intermediate points.

Economic Impacts

This proposed policy statement has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets, but would enhance competition among Alaskan air carriers. The proposed action would result in no change in reporting burden for air carriers. No regulatory evaluation is required because adoption of the policy statement would result in minimal economic costs. The proposed rule is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies.

The Department has considered the implications of this proposed action under the requirements of Executive Order 12612, Federalism, and has determined that the preparation of a Federalism Assessment is not warranted. The policy statement would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

The entities that would be affected by the proposed rule are air carriers certificated under section 401 of the Act that provide air transportation of U.S. mail in the State of Alaska. Nearly all of the 38 Alaskan certificated carriers are small businesses operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less).

In its aviation economic regulations, the Department categorizes air carriers operating small aircraft in strictly domestic service as small entities. To date, we are aware of only three small commonly owned Alaskan certificated carriers (only two of which are currently conducting operations) that would be affected by this policy statement and thus possibly suffer some economic loss if this rule were adopted. The ability of these and other entities to engage in air carrier operations would be otherwise unaffected by the proposed amendment. Therefore, in accordance with the Regulatory Flexibility Act, Public Law 96-354, we certify that this rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

We have reviewed the proposed policy statement with regard to its compliance with the provisions of section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). No additions or changes to collections of information are being made which would warrant a review by the Office of Management and Budget and the previously assigned control numbers would still be applicable.

List of Subjects in 14 CFR Part 399

Airline regulation, Mail transportation operations, Unfair competition.

Proposed Rule

For the reasons set out in the preamble, title 14, chapter II, part 399 of the Code of Federal Regulations is proposed to be amended as follows:

PART 399—[AMENDED]

1. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502, and 1504, unless otherwise noted.

A new § 399.89 is added to read as follows:

§ 399.89 Unfair competition by commonly owned carriers within the State of Alaska.

(a) It is the policy of the Department of Transportation to regard it as an unfair method of competition under section 411 of the Federal Aviation Act for an individual or entity to own multiple air carriers that engage in direct competition in the same city pair market within the State of Alaska with the effect that the multiple carriers, taken together, receive a greater proportion of the mail tendered for transport by the United States Postal Service, under its present regulations, than the proportion received by any individual carrier serving the same market.

(b) For the purpose of this statement:

(1) *Commonly owned* shall mean air carriers that are solely owned by the same stockholders or holding company or whose stockholders own more than 10% of the stock of another air carrier.

(2) *City pair market* shall mean any two points served, either directly or indirectly, as terminal points or intermediate points.

Issued in Washington, DC, on June 7, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-14146 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Records and Reports of Listed Chemicals and Certain Machines

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA is amending its regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) to include the additional chemicals set forth in the Crime Control Act of 1990. This notice also proposes to set thresholds for these chemicals. The

[3] We are also concerned that, absent the proposed policy, air carrier owners in Alaska will have an incentive to create multiple carrier operations, which would place an unnecessary strain on the limited Department resources devoted to ensuring air carrier fitness. In this regard, the complexity of these applications increases with situations that involve shared personnel, facilities, and equipment. Furthermore, the added number of carriers increases the recordkeeping burden on the Postal Service.

inclusion of these chemicals into the CDTA requires any handler of listed chemicals to comply with the requirements specified in 21 CFR parts 1310 and 1313. The DEA also proposes to amend the threshold on two existing listed chemicals.

DATES: Written comments and objections must be received on or before July 15, 1991.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC, 20537 Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Crime Control Act of 1990 (Pub. L. 101–647) amends the list of chemicals which are subject to the requirements of the Chemical Diversion and Trafficking Act of 1988 (CDTA). Although these chemicals became subject to the requirements of the CDTA and the regulations upon the signing of the Crime Control Act of 1990 on November 27, 1990, this rule is being issued as a proposed rule rather than a final rule to allow for comment on the thresholds set forth for each of the new listed chemicals and the new thresholds proposed for two existing listed chemicals.

The Crime Control Act of 1990 adds twelve chemicals to the list of precursor chemicals, one of which was previously listed as an essential chemical and another, D-lysergic acid is a controlled substance in Schedule III of the Controlled Substances Act. The new list under 21 CFR 1310.02(a) shows some of the chemicals with an additional name in parenthesis. These names reflect the conventional spelling for the chemicals. The parenthetical name is the one listed with the thresholds in 21 CFR 1310.04(f).

In addition to the new listed chemicals, it is proposed that the threshold for two other listed chemicals be amended. The threshold for hydriodic acid is proposed to be consistent with its reclassification as a precursor chemical rather than an essential chemical. The threshold on 3,4-methylenedioxyphenyl-2-propanone is being lowered based upon information that quantities below the threshold level are being purchased to evade the requirements of the CDTA.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed action has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

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

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding paragraphs (a)(13) through (a)(24) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(13) Methylamine and its salts

(14) Ethylamine and its salts

(15) D-lysergic acid, its salts, optical isomers, and salts of optical isomers

(16) Propionic anhydride

(17) Insosafrole (Isosafrole)

(18) Safrole

(19) Piperonal

(20) N-Methylepherdine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine)

(21) N-Ethylephedrine, its salts, optical isomers, and salts of optical isomers

(22) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers

(23) N-Ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers

(24) Hydriotic acid (Hydriodic Acid)

* * * * *

3. Section 1310.02 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(5) through (b)(7).

§ 1310.04 [Amended]

4. Section 1310.04 is amended by revising paragraph (f)(1)(xii) and adding paragraphs (f)(1)(xiii) through (f)(1)(xxiv) to read as follows:

* * * * *

(f) * * *

(1) Listed Precursor Chemicals

Chemical	Threshold by base weight
* * * * *	
(xii) 3,4-Methylenedioxyphenyl-2-propanone.	4 kilograms.
(xiii) Methylamine and its salts	1 kilogram.
(xiv) Ethylamine and its salts	1 kilogram.
(xv) D-lysergic acid, its salts, optical isomers, and salts of optical isomers.	10 grams.
(xvi) Propionic anhydride	1 gram.
(xvii) Isosafrole	4 kilograms.
(xviii) Safrole	4 kilograms.
(xix) Piperonal	4 kilograms.
(xx) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxi) N-Ethylephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxii) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxiii) N-Ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xxiv) Hydriodic acid (57%)	1.7 kilograms (or 1 liter by volume).

5. Section 1310.04 is amended by removing paragraph (f)(2)(i)(E) and redesignating paragraphs (f)(2)(i)(F) through (f)(2)(i)(H) as paragraphs (f)(2)(i)(E) through (f)(2)(i)(G).

6. Section 1310.04 is amended by removing paragraph (f)(2)(ii)(E) and redesignating paragraphs (f)(2)(ii)(F) through (f)(2)(ii)(H) as paragraphs (f)(2)(ii)(E) through (f)(2)(ii)(G).

Dated: March 21, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91–14135 Filed 6–13–91; 8:45 am]

BILLING CODE 4410–09–M

21 CFR Part 1313

Importation and Exportation of Precursors and Essential Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations concerning the granting of regular supplier and regular customer status under the provisions of the Chemical Diversion and Trafficking Act

of 1988 (CDTA) to simultaneously grant regular supplier or regular customer status for three of the listed essential chemicals (acetone, 2-Butanone (MEK), and toluene) when regular supplier or regular customer status has been established for one of these essential chemicals. This amendment would reduce the regulatory requirement on the chemical industry without reducing the effectiveness of the CDTA.

DATES: Written comments and objections must be received on or before August 13, 1991.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: Since the publication of the final rule promulgating the regulations for the CDTA (54 FR 31657, August 1, 1989), it has been noted that many of the regular customers and regular suppliers submitted to DEA for review handle three of the solvents listed as essential chemicals (acetone, 2-Butanone (MEK), and toluene) on a regular basis. In considering the illicit uses of these three solvents, it has been determined that they are frequently interchanged for each other. Therefore, DEA's review of foreign customers and suppliers would address concerns which apply to all three essential chemicals.

Consideration was given to allowing the establishment of regular customer or regular supplier status for one essential chemical to apply to all essential chemicals. This was rejected because not all essential chemicals are used interchangeably in either the licit or illicit market. The stated business needs for one essential chemical which is reviewed in consideration of regular customer or regular supplier status may be incompatible with future orders for another essential chemical. Such new orders of other essential chemicals may warrant additional scrutiny.

In view of the above, DEA proposes to amend § 1313.15, Waiver of 15-day Advance Notice for Chemical Importers, by redesignating paragraph (d) as paragraph (e) and inserting a new paragraph (d) providing regular supplier status for three of the listed essential chemicals, specifically acetone, 2-Butanone (MEK), and toluene, when regular supplier status has been established for one of the three chemicals. DEA also proposes to amend Section 1313.24, Waiver of 15-day Advance Notice for Chemical Exporters, by redesignating paragraph (d) as paragraph (e) and inserting a new paragraph (d) providing regular customer status for three of the listed essential chemicals, specifically acetone, 2-Butanone (MEK), and toluene, when regular customer status has been established for one of the three chemicals.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1313

Drug enforcement administration, Drug traffic control, Exports, Imports, Reporting requirements.

For reasons set out above, it is proposed that 21 CFR part 1313 be amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(B) and 971.

2. Section 1313.15 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) which reads as follows:

§ 1313.15 Waiver of 15-day advance notice for chemical importers.

* * * * *

(d) Unless the Administration notifies the chemical importer to the contrary, the qualification of a regular supplier of any one of these three essential chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that supplier as a regular supplier of all three of these chemicals.

* * * * *

3. Section 1313.24 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) which reads as follows:

§ 1313.24 Waiver of 15-day advance notice for chemical exporters.

* * * * *

(d) Unless the Administration notifies the chemical exporter to the contrary, the qualification of a regular customer for any one of these three essential chemicals, acetone, 2-Butanone (MEK), or toluene, qualifies that customer as a regular customer for all three of these chemicals.

* * * * *

Dated: March 21, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–14136 Filed 6–13–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

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

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

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

DATES: Written comments must be received by 4 p.m., c.d.t., July 15, 1991. If requested, a public hearing on the proposed amendment will be held on July 10, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t., on July 1, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

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

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105, Telephone: (816) 374–6405.

Kansas Department of Health and Environment, Surface Mining Section, 1501 S. Joplin (Shirk Hall, 4th Floor), P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office, (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program, can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning the Kansas program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Proposed Amendment

By letter dated June 3, 1991, (Administrative Record No. KS–505), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to exceptions placed on the approval of the revegetation guidance document "Kansas Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success" in the **Federal Register** dated February 19, 1991, (53 FR 6559) (Administrative Record No. KS–502).

Kansas is proposing revisions to this guidance document regarding the methods for the determination of revegetation success prior to Phase III bond release, as required in the Federal regulations at 30 CFR 816/817.116(a)(1).

III. Public Comment Procedures

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

Written Comments

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

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., c.d.t., July 15, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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

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

Public Meeting

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

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 7, 1991.

Raymond L. Lowrie,

Assistant Director Western Support Center.

[FR Doc. 91–14167 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

34 CFR Part 318

RIN 1820–AA95

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations for the Training Personnel for the Education of Individuals with Disabilities program authority as reauthorized in the Education of the Handicapped Act Amendments of 1990. The proposed regulations would conform existing regulations to statutory provisions enacted in the 1990 Amendments, and would also include minor clarifications to certain existing regulations.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Max Mueller, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–2651.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Papervork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Max Mueller, 202–732–1554.

SUPPLEMENTARY INFORMATION: The 1990 Amendments change the name of the Office of Special Education personnel preparation program (Part D of the Act) from Training Personnel for the Education of Individuals with Handicaps to Training personnel for the Education of Individuals with Disabilities. The name of the law itself is now Individuals with Disabilities Education Act (IDEA). These regulations, Grants for Personnel Training (34 CFR part 318), implement

sections 631(a) and (b) of the Act. Other aspects of Part D are regulated under 34 CFR parts 316, 319, and 320.

The major purpose of the new regulations is to incorporate new program authorities mandated or authorized by the 1990 Amendments. Major issues include:

Minority Issues

The 1990 Amendments require substantially increased attention to the interaction of special education and education of minority groups. The 1990 Amendments specifically include requirements relating to programs for minority infants, toddlers, children, and youth with disabilities, recruitment and training of minority personnel to serve infants, toddlers, children, and youth with disabilities, and the need to increase involvement of minority institutions in programs supported under the Act. This has led to proposed changes in application requirements, grantee requirements, and priorities.

Reporting Requirements

The 1990 Amendments place considerable emphasis on increasing the dissemination of information derived from supported projects. Specific requirements have been added dealing with the preparation of project reports and the channels appropriate for dissemination.

Target Populations

The 1990 Amendments modified the career categories eligible for funding and amended the special projects authority to reflect important trends and priorities for serving children with disabilities.

Training Content

The Secretary is now authorized under IDEA to require (as appropriate or where relevant) attention to content of training programs focused on training techniques, procedures, and practically designed to demonstrate the delivery of services in an array of regular, special education, and community settings; coordination or collaboration among personnel serving infants, toddlers, children, and youth with disabilities; and interdisciplinary preparation of trainees. The Secretary is proposing that these elements are generally appropriate and relevant to projects funded under this program. Proposed regulations elaborate upon the category of coordination or collaboration.

For the most part the foregoing changes are taken directly from the legislation, and are only minimally subject to revision based on public comment. However, comments directed to the possible need for additional explanation or elaboration of requirements are appropriate.

Other changes are proposed that go beyond the specific requirements or authorizations of the 1990 Amendments:

Priorities

Proposed changes in priorities are based on review of 1991 annual priorities. The publication of these priorities does not preclude the Secretary from publishing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Organization

A number of minor changes in organization and language have been made to clarify the existing regulations and to conform the regulations more closely to the legislation.

Selection Criteria

The current application selection criteria with minor modifications based specifically on the Act are included as a part of this NPRM. However, a subsequent NPRM will be developed to make revisions in the selection criteria to promote greater commonality in criteria across other discretionary programs authorized under Parts C through G of the Act. Nevertheless, comments on these selection criteria are appropriate as advanced public input on that effort.

Definitions

The proposed regulations do not contain definitions for the following terms because these terms have yet to be defined in accordance with the 1990 Amendments. When these terms have been defined in other CFR parts, they will be added to part 318 by a final technical rule.

(1) Definitions To Be in 34 CFR Part 300

Children with disabilities.
Hearing impairments, including deafness.
Deaf-blindness.
Mental retardation.
Multiple disabilities.
Orthopedic impairments.
Other health impairments.
Serious emotional disturbance.
Specific learning disabilities.
Speech impairments.
Visual impairments, including blindness.
Traumatic brain injury.
Autism.
Parent.
Related services.
Special education.
Vocational education.
Transition services.

(2) Definition To Be in 34 CFR Part 301

Preschool.

(3) Definitions To Be in 34 CFR Part 303

Early intervention services.
Multidisciplinary.

(4) Definition To Be in 34 CFR Part 315

Children and youth with severe disabilities.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small nonprofit agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on these organizations because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 318.20, 318.22, 318.23, and 318.34 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

These regulations affect private nonprofit entities and institutions of higher education, which are the types of entities eligible to receive awards under this program. The Department needs and uses the information to evaluate the applications and select the entities that will receive awards.

Annual public reporting and recordkeeping burden for this collection of information is expected to average 40 hours per response for 1,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information.

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 Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3072, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 318

Education, Education of individuals with disabilities, Education—training, Grant programs—education, Student aid, and Teachers.

Dated: April 4, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.029—Training Personnel for the Education of Individuals with Disabilities)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 318 to read as follows:

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

Subpart A—General

Secs.

318.1 What is the purpose of this program?
318.2 Who is eligible for an award?
318.3 What regulations apply to this program?
318.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

318.10 What activities may the Secretary fund?
318.11 What priorities may the Secretary establish?

Subpart C—How Does the Secretary Make an Award?

318.20 What are the requirements for applicants?
318.21 How does the Secretary evaluate an application?
318.22 What selection criteria does the Secretary use to evaluate applications other than applications for special projects?
318.23 What selection criteria does the Secretary use to evaluate applications for special projects?

Subpart D—What Conditions Must a Grantee Meet?

318.30 What are the priorities for award of student fellowships and traineeships?
318.31 Is student financial assistance limited?
318.32 What are the student financial assistance criteria?
318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?
318.34 What are the reporting requirements under this program?

Authority: 20 U.S.C. 1431, 1434, and 1435, unless otherwise noted.

Subpart A—General

§ 318.1 What is the Purpose of this program?

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities through support of training programs for—

(a) Special education, related services, early intervention;

(b) Leadership, and

(c) Special projects.

(Authority: 20 U.S.C. 1431)

§ 318.2 Who is eligible for an award?

(a) The following are eligible for assistance under this part:

(1) Institutions of higher education and appropriate nonprofit agencies are eligible under § 318.1 (a) and (b).

(2) Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible under § 318.1(c).

(b) In order to receive a grant under § 318.1(a) or (b), an institution or agency must demonstrate that it meets State and professionally recognized standards for the training of personnel, as evidenced by appropriate State and professional accreditation, unless the grant is for the purpose of assisting the applicant agency or institution to meet those standards.

(Authority: 20 U.S.C. 1431)

§ 318.3 What regulations apply to this Program?

The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 318.

§ 318.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant.
Application.
Award.
Department.
EDGAR.
Fiscal year.
Grant period.
Local educational agency.
Nonprofit.

Preschool.
Private.
Project.
Public.
Secretary.
State.
State educational agency.

(b) *Definitions specific to 34 CFR part 318.* The following terms used in this part are defined as follows:

Act means the Individuals with Disabilities Education Act (IDEA).

Infants and toddlers with disabilities: (1) The term means children from birth through age two who need early intervention services because they—

(i) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Language or speech development.

(D) Psychosocial development.

(E) Self-help skills; or

(ii) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) The term also include children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1400, 1431 (a) and (b), 1472)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 318.10 What activities may the Secretary fund?

(a) Projects supported under this program may provide training for degree, nondegree, certified, and noncertified personnel at associate degree through post-doctoral levels of preparation.

(b) The Secretary supports three types of projects under this program—

(1) Development of new programs to establish expanded capacity for quality preservice training;

(2) Improvement of existing programs designed to increase the capacity and quality of preservice training; and

(3) Special projects.

(c) The Secretary supports training programs in the following areas:

(1) Preservice training of personnel for careers in special education, related services, and early intervention, including careers in—

(i) Special education teaching, including speech-language pathology, audiology, adapted physical education, and instructional and assistive technology;

(ii) Related services for children with disabilities in educational and other settings; and

(iii) Early intervention and preschool services.

(2) Leadership training including—

(i) Supervision and administration at the advanced graduate, doctoral and post-doctoral levels;

(ii) Research at the doctoral and post-doctoral levels; and

(iii) Personnel preparation at the doctoral and post-doctoral levels.

(3) Special projects designed to include—

(i) Development, evaluation, and distribution of innovative approaches, curricula, and materials for personnel development; and

(ii) Other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(Authority: 20 U.S.C. 1431)

§ 318.11 What priorities may the Secretary establish?

The Secretary may select annually one or more priority areas for funding, including:

(a) *Preparation of personnel for careers in special education.* This priority supports preservice preparation of personnel for careers in special education, or supervisors of those personnel. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. Under this priority personnel includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists. Training of administrators and supervisors at the baccalaureate and masters level is also appropriate under this priority.

(b) *Preparation of related services personnel.* (1) This priority supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists (PT), occupational therapists (OT), school psychologists, counselors including rehabilitation counselors, interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel. Projects to train personnel identified as special education personnel in the regulations in this part are not appropriate, even if those personnel may be considered related services personnel in other settings.

(2) This program is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy might support a special component on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings.

(c) *Training early intervention and preschool personnel.* This priority supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth to five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

(d) *Preparation of leadership personnel.* This priority supports projects that are designed to provide preservice advanced graduate, doctoral, and post-doctoral preparation in administration and supervision; or doctoral and post-doctoral level training in research or personnel preparation.

(e) *Special projects.* (1) This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(2) Appropriate areas of interest include—

(i) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(ii) Training teachers to work in community and school settings with

children and youth with disabilities and their families;

(iii) Inservice and preservice training of teachers to work with infants, toddlers, children, and youth with disabilities and their families;

(iv) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(v) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(vi) Recruitment and retention of special education, related services, and early intervention personnel.

(3) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators.

(f) *Utilizing innovative recruitment and retention strategies.* This priority supports projects to develop emerging and creative sources of supply of personnel with degrees and certification in appropriate disciplines, and innovative strategies related to recruitment and retention of personnel.

(g) *Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.* This priority supports projects designed specifically to train personnel who are working with less than full certification or outside their field of specialization, to assist them in becoming fully qualified. Student incentives; extension, summer, and evening programs; internships; alternative certification plans; and other innovative practices are appropriate under this priority.

(h) *Training personnel to serve low incidence disabilities.* This priority supports projects to train teachers of children with serious emotional disturbance; visual impairments, including blindness; hearing impairments, including deafness; orthopedic impairments; other health impairments; and severe and multiple disabilities.

(i) *Training personnel to work in rural areas.* This priority supports projects to train personnel to serve infants, toddlers, children, and youth with disabilities in rural areas. Projects, including curricula, procedures, practica, and innovative use of technology, must be designed to provide training to assist personnel to work with parents, teachers, and administrators in these special environments. Special strategies must be designed to recruit personnel from rural areas who will most likely return to those areas.

(j) *Training personnel to provide transition assistance from school to adult roles.* This priority supports projects for preparation of personnel who assist youth with disabilities in their transition from school to adult roles. Personnel may be prepared to provide short-term transition services, long-term structured employment services, or instruction in community and school settings with secondary school students.

(k) *Preparation of paroprofessionals.* This priority supports projects for the preparation of paraprofessionals. This includes programs to train teacher aides, job coaches, interpreters, therapy assistants, and other personnel who provide support to professional staff in delivery of services to infants, toddlers, children, and youth with disabilities.

(l) *Improving services for minorities.* This priority supports projects to prepare personnel to serve infants, toddlers, children, and youth with disabilities who, because of minority status, require that personnel obtain professional competencies in addition to those needed to teach other children with similar disabilities. Projects funded under this priority must focus on specific minority populations, determine the additional competencies that are needed by professionals serving those populations, and develop those competencies.

(m) *Training minority personnel.* This priority supports projects to recruit and prepare minority individuals and individuals with disabilities for careers in special education, related services, and early intervention, including leadership personnel.

(n) *Minority institutions.* This priority supports grants to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Grants may provide training in any of the areas covered in other priorities, and must be designed to increase the capabilities of the institution in appropriate training areas.

(Authority: 20 U.S.C. 1431)

Subpart C—How Does the Secretary Make an Award?

§ 318.20 What are the requirements for applicants?

(a) An applicant shall demonstrate that the proposed project is consistent with the needs for personnel, including personnel to provide special education services to children with limited English proficiency, identified by the comprehensive system of personnel development of the State or States typically employing program graduates.

(b) An applicant under this program shall address—

(1) Training techniques and procedures designed to foster collaboration among special teachers, regular teachers, administrators, related service personnel, early intervention personnel, and parents;

(2) Training techniques, procedures, and practica designed to demonstrate the delivery of services in an array of regular, special education, and community settings; and

(3) Interdisciplinary preparation of trainees.

(c) An applicant shall demonstrate how it will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

(d) An applicant shall present a detailed description of strategies for recruitment and training of members of minority groups and persons with disabilities.

(Authority: 20 U.S.C. 1410 and 1431)

§ 318.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 318.22 and 318.23.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431)

§ 318.22 What selection criteria does the Secretary use to evaluate applications other than applications for special projects?

The Secretary uses the following criteria to evaluate all applications other than applications for special projects.

(a) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(1) The significance of the personnel needs to be addressed to the provision of special education, related services, and early intervention. Significance of need identified by the applicant may be shown by—

(i) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted specialty or

geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(ii) Evidence showing significant need for improvement in the quality of personnel providing special education, related services and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(2) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(i) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(ii) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(iii) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(b) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(1) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(2) The amount of time each key person plans to commit to the project;

(3) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(4) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(5) The quality of the practicum training settings, including evidence that they are sufficiently available; apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(6) The capacity of the applicant to recruit well-qualified students;

(7) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(8) The extent to which the applicant cooperates with the State educational agency, the State designated lead agency under Part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(c) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(6) The extent to which substantive content and organization of the program—

(i) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(7) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and

(3) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

§ 318.23 What selection criteria does the Secretary use to evaluate applications for special projects?

The Secretary uses the following criteria to evaluate special projects applications:

(a) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related services, or early intervention services personnel development.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and

instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431)

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 What are the priorities for award of student fellowships and traineeships?

A grantee shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

(Authority: 20 U.S.C 1431)

§ 318.31 Is student financial assistance limited?

The sum of the assistance provided to a student under this part and any other assistance provided the student may not exceed the student's cost of attendance. Cost of attendance is defined as—

(a) Tuition and fees normally assessed a student carrying the same academic workload, as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students to the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance, as determined by the institution, for room and board costs incurred by the student that—

(1) Will be not less than $1,500 for students without dependents residing at home with parents;

(2) Will be the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(3) Will be based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specially in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(g) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents;

(h) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction may be made with respect to the mode of instruction in determining costs, but this paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087)

§ 318.32 What are the student financial assistance criteria?

Direct financial assistance may only be paid to a student in a preservice program, and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as defined in 34 CFR 668.7; and

(c) The student is a citizen or national of the United States.

(Authority: 20 U.S.C. 1087)

§ 318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other students during the grant period.

(Authority: 20 U.S.C. 1087)

§ 318.34 What are the reporting requirements under this program?

The Secretary may require recipients to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of all procedures, findings, and information. The recipient shall deliver products, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses,

and the technical assistance to parents program assisted under Parts C and D of the Act; as well as to the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, the Child and Adolescent Service Systems Program under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and any other entities that the Secretary determines to be appropriate.

(Authority: 20 U.S.C. 1410)

[FR Doc. 91-14185 Filed 6-13-91; 8:45 am]
BILLING CODE 4000-01-M

34 CFR Part 328

RIN 1820-AA91

Program for Children and Youth With Serious Emotional Disturbance

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish regulations for a new program authority enacted in the Education of the Handicapped Act Amendments of 1990. The proposed regulations would provide information about the kinds of projects supported under this program; and provide the application requirements and selection criteria for reviewing applications.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, 300 "C" Streets, SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Telephone: (202) 732-1099. (TDD: (202) 732-6153.)

SUPPLEMENTARY INFORMATION: The Program for Children and Youth with Serious Emotional Disturbance provides assistance for projects designed to improve special education and related services to children and youth with serious emotional disturbance (SED). Types of projects that may be supported under this program include, but are not limited to: Research, development, and demonstration projects.

Section 627(c)(3) of the Act, requires reporting on project effectiveness. This requirement is not addressed in these regulations since this is a matter that is covered under the Education Department General Administrative Regulations (EDGAR), 34 CFR 74.82 and 80.40 (performance reporting), and will be implemented under those regulations.

Project effectiveness is documented by describing the proposed and actual activities and success in meeting goals, as well as providing a summary of lessons learned. Such documentation provides for project accountability and addresses: (1) The research question, hypothesis, issue, or problem; (2) the methods and procedures used; (3) the actual sample and procedures; (4) measurement procedures and instruments; (5) description of intervention or data analysis procedures; (6) summary of findings; (7) conclusions and implications; (8) contributions; (9) lessons learned; and (10) next steps.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies, institutions of higher education, and other entities receiving Federal funds under this program. However, the regulations would not have a significant economic impact on these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 328.21, 328.22, and 328.30 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Information collection requirements in §§ 328.21 and 328.22 must be met by applicants seeking support to conduct activities authorized under section 626 of the Individuals with Disabilities Education Act. This information will be used to determine grant eligibility, acceptability of proposals, and awards. Information collection requirements in § 328.30 must be met by grantees to meet minimal requirements for project accountability. The information consists of descriptions of program procedures, findings, and relevant information.

These regulations affect institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies, which are the types of entities eligible to receive awards under this program. The Department needs and uses the information to evaluate the applications and select the entities that will receive awards.

Annual public reporting and recordkeeping burden for this collection of information is expected to average 40 hours per response for 30 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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 Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3524, Switzer Building, 300 "C" Street SW., Washington, DC, between the

hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 328

Education, Education of Children and Youth with Disabilities, Education—research, Grants program—education, Local educational agency, Reporting and recordkeeping requirements, School, State educational agencies.

(Catalog of Federal Domestic Assistance Number: 84.237—Program for Children and Youth with Serious Emotional Disturbance)

Dated: April 9, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 328 to read as follows:

PART 328—PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE.

Subpart A—General

Sec.

328.1 What is the Program for Children and Youth with Serious Emotional Disturbance?
328.2 Who is eligible for an award?
328.3 What priorities may the Secretary fund under this program?
328.4 What priorities may the Secretary establish?
328.5 What regulations apply?
328.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

328.20 How does the Secretary evaluate an application?
328.21 What selection criteria does the Secretary use for applications for research projects?
328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?
328.23 When may the Secretary propose new selection criteria?

Subpart D—What Conditions Must Be Met after an Award?

328.30 What special conditions apply to projects assisted under this program?

Authority: 20 U.S.C. 1426, unless otherwise noted.

Subpart A—General

§ 328.1 What is the Program for Children and Youth with Serious Emotional Disturbance?

Under this program, the Secretary may support—

(a) Projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance; and

(b) Demonstration projects to provide services for children and youth with serious emotional disturbance. Funds for projects under this paragraph may also be used—

(1) To facilitate interagency and private sector resource pooling to improve services for children and youth with serious emotional disturbance; and

(2) To provide information and training for those involved with, or who could be involved with, children and youth with serious emotional disturbance.

(Authority: 20 U.S.C. 1426 (a), (b))

§ 328.2 Who is eligible for an award?

(a) To carry out the purpose in § 328.1(a), the Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies.

(b) *Demonstration service projects.* To carry out the purposes in § 328.1(b), the Secretary may make grants to local educational agencies in collaboration with mental health entities.

(Authority: 20 U.S.C. 1426 (a), (b))

§ 328.3 What priorities may the Secretary fund under this program?

(a) Under § 328.2(a), the Secretary may support projects that include, but are not limited to—

(1) Studies regarding the present state of special education and related services to children and youth with serious emotional disturbance and their families, including information and data to enable assessments of the status of those services over time;

(2) Developing methodologies and curricula designed to improve special education and related services for these children and youth;

(3) Developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and to encourage the increased use of school district-based programs, which may include day treatment programs, after-school programs, and summer programs;

(4) Developing the knowledge, skills and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

(5) Developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

(b) Under § 328.2(b), the Secretary may support demonstration projects that include, but are not limited to—

(1) Increasing the availability, access, and quality of community services for children and youth with serious emotional disturbance and their families;

(2) Improving working relationships among education, school, and community mental health and other relevant personnel, families of those children and youth, and their advocates;

(3) Targeting resources to school settings, such as providing access to school or community mental health professionals or both and other community resources for students with serious emotional disturbance who are in community school settings; and

(4) Taking into account the needs of minority children and youth in all phases of project activity.

(Authority: 20 U.S.C. 1426(a), (b))

§ 328.4 What Priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the types of activities listed in § 328.3.

(b) The Secretary announces these priorities in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1426(a))

(c) In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105, the Secretary may also propose new priorities for assistance under this program through publication of a notice in the **Federal Register**.

(Authority: 20 U.S.C. 1426(a), and 20 U.S.C. 3474)

§ 328.5 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chap. 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR Chap. 34.

(c) The regulations in this part 328.

(Authority: 20 U.S.C. 1426)

§ 328.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1: 1

Application.
EDGAR.
Grant.
Local educational agency (LEA).
Project.
Public.
Secretary.
State.
State educational agency (SEA).

(b) *Other definitions.* The following definitions also apply to this Part:

Act means the Individuals with Disabilities Education Act, as amended.

Free appropriate public education is defined in 34 CFR 300.4.

(Authority: 20 U.S.C. 1426)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 328.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 328.21, 328.22, and 328.23.

(b) The Secretary awards up to 100 points under these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1426)

§ 328.21 What selection criteria does the Secretary use for applications for research projects?

(a) The Secretary uses the following criteria to evaluate an application for a research project:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(3) The Secretary reviews each application to determine the quality of the evaluation plan for the project, and considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(e) *Importance.* (15 points)

The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(f) *Impact.* (15 points) The Secretary reviews each application to determine the probable impact of the proposed research products on infants, toddlers, children, and youth with disabilities, or personnel responsible for their education.

(g) *Organizational capability.* (5 points) The Secretary considers—

(1) The applicant's experience in special education; and,

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that the findings can be used effectively.

(h) *Technical soundness.* (35 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) The instrumentation; and

(4) The data analysis procedures.

(Authority: 20 U.S.C. 1426)

§ 328.22 What selection criteria does the Secretary use for applications for development or demonstration projects?

The Secretary uses the following criteria to evaluate an application for a development or demonstration project:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation Plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine—

(1) The extent to which the service delivery problem addressed by the proposed project is of concern to others in the Nation; and,

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

(Authority: 20 U.S.C. 1426)

§ 328.23 When may the Secretary propose new selection criteria?

(a) The Secretary may propose new selection criteria for applications for projects if the applications cannot be appropriately evaluated using the selection criteria in either § 328.21 or § 328.22.

(b) The Secretary may announce the new selection criteria in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1426)

Subpart D—What Conditions Must be Met After an Award?

§ 328.30 What special conditions apply to projects assisted under this program?

(a) Each project assisted under this program must—

(1) Apply existing research outcomes from multidisciplinary fields; and

(2) In complying with 34 CFR 75.590 (Evaluation by the grantee), use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth.

(b) A grantee, if appropriate, must prepare reports describing procedures, findings, and other relevant information in a form that will maximize the dissemination and use of these procedures, findings, and information.

(c) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under Parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C 1426(c))

[FR Doc. 91-14186 File 6-13-91; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 170

[OPP-300164D; FRL-3793-2]

Worker Protection Standards for Agricultural Pesticides; Notification of the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transmittal of final rule to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a regulation on worker protection standards for agricultural pesticides (40 CFR parts 156 and 170). This action is required by section 25(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Breslin, Chief, Occupational Safety Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1009, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-7666.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA provides that the Administrator of EPA shall provide the Secretary of Agriculture with a copy of any regulation at least 30 days prior to signing it for publication in the Federal Register. The Administrator and the Secretary may, by agreement, modify or waive this time requirement, and they have done so with respect to the worker protection final rule. Accordingly, if the Secretary comments in writing regarding the regulation within 45 days after receiving it, the Administrator shall issue for publication in the Federal Register, with the regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 45 days after receiving the regulation, the Administrator may sign the regulation for publication in the Federal Register any time thereafter.
(Sec. 25., Pub. L. 92-516, 86 Stat. 973, as amended (7 U.S.C. 136 et seq.))

Dated: June 11, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-14345 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-F

---

40 CFR Part 170

[OPP-300164E; FRL-3793-3]

Worker Protection Standards for Agricultural Pesticides; Notification of the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transmittal of proposed rule to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation on worker protection standards for agricultural pesticides (40 CFR part 170). This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Breslin, Chief, Occupational Safety Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1009, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-7666.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator of EPA shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the Federal Register. The Administrator and the Secretary may, by agreement, modify or waive this time requirement, and they have done so with respect to this proposed rule. Accordingly, if the Secretary comments in writing regarding the proposed regulation within 45 days after receiving it, the Administrator shall issue for publication in the Federal Register, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 45 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the Federal Register any time thereafter.
(Sec. 25., Pub. L. 92-516, 86 Stat. 973, as amended (7 U.S.C. 136 et seq.))

Dated: June 11, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-14344 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 560 and 572

[Docket No. 91-20]

Exemption of Certain Marine Terminal Services Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On May 15, 1991, the Federal Maritime Commission published a notice of proposed rulemaking (56 FR 22384) which proposes to amend 46 CFR parts 515, 560 and 572 to conditionally exempt, pursuant to section 35 of the Shipping Act, 1916, and section 16 of the Shipping Act of 1984, certain marine terminal services arrangements from certain agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984 and the Commission's implementing regulations thereunder, and to conditionally discontinue the Commission's tariff filing requirements for such matters. The notice of proposed rulemaking directed that parties filing reply comments serve a copy of those replies on all other commenters. The Commission omitted the requirement that initial comments be served on all other commenters, in order to facilitate the filing of reply comments. This correction adds the requirement that all parties filing initial comments serve a copy of their comments on all other commenters, so that replies may be made. The Secretary of the Commission will provide a service list for this purpose shortly after completion of the initial round of comments.

DATES: Comments on or before July 15, 1991. Replies on or before August 13, 1991.

ADDRESSES: Send an original and fifteen copies of comments and replies to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5796.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14124 Filed 6-13-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Little Mariana Fruit Bat, Mariana Fruit Bat, Guam Broadbill, Mariana Crow, Guam Micronesian Kingfisher, and Guam Bridled White-Eye

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate critical habitat for six endangered forest species on Guam, the little Mariana fruit bat (*Pteropus tokudae*), Mariana fruit bat (*Pteropus mariannus mariannus*), Guam broadbill (*Myiagra freycineti*), Mariana crow (*Corvus kubaryi*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Guam bridled white-eye (*Zosterops conspicillatus conspicillatus*). These species were listed as endangered on August 27, 1984. Critical habitat was not designated at the time of the listing because it was not deemed prudent. Federal actions that may affect the areas designated as critical habitat would be subject to consultation with the Service, pursuant to section 7(a)(2) of the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by August 13, 1991. Public hearing requests must be received by July 29, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, PO Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Engbring, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

In the final rule published August 27, 1984, in the **Federal Register** (49 FR 33881), the Service determined endangerd status for seven birds—Guam broadbill, Mariana crow, Mariana gallinule (moorhen), Micronesian kingfisher, Guam rail, Vanikoro swiftlet, and bridled white-eye—and two mammals—the little Mariana fruit bat and Guams population of Mariana fruit bat. These species are found in the Mariana Islands in the western Pacific in the Territory of Guam and the Commonwealth of the Northern Mariana Islands, both under the jurisdiction of the United States. For further information on the listing of these species, see the 1984 **Federal Register.**

Six of these seven endangered species (all but the rail) are forest species, and their primary habitat is native forest. These six species were at one time distributed in forest throughout Guam. By the time they were listed in 1984, their ranges had been severely reduced. Since then they have continued to decline in the wild. Their primary habitat is undisturbed native forest, but they are relatively adaptable and are able to reside in a variety of forest types, including forests with mixed native and introduced vegetation, mature forests, coconut forests, strand forests, and second growth forests.

The Mariana crow is endemic to Guam and Rota. The population on Rota has been relatively stable and, based on a 1982 survey, was believed to number about 1,300 individuals (Engbring et al. 1986). On Guam, the population has declined and is now believed to number fewer than 100 individuals (USFWS 1987b). Moreover, there has been little or no successful reproduction. Compared to other forest birds of Guam and Rota, the crow requires relatively large tracts of forest that do not have high levels of human activity. More forest is necessary to maintain a genetically viable population of this species than for other forest birds on Guam.

The Marina fruit bat is found on all the major islands in the Marianas. Only the Guam population is listed as endangered, although population on Saipan, Tinian, and Aguijan are listed as category 1 candidate species, and the populations on Rota and the islands north of Saipan are listed as category 2 candidate species (54 FR 554). On Guam the bat was historically found thorughout native forests. By the 1980's it had been reduced to a population of about 500 and was restricted to forest on the northern tip of the island (USFWS 1987a), although there are occasional reports of bats from southern Guam around Fena Reservoir. Illegal hunting is believed to be one of the major causes for the decline, but predation by the brown tree snake may also be an important limiting factor (Wiles 1987). Various species of Pacific fruit bats generally use a variety of forest types including agricultural forest in close proximity to residential areas. On Guam, however, it has not been possible to provide adequate protection from poaching, and residential areas have been excluded from use by the bat probably because of this illegal hunting. Forested areas protected from human intrustion are necessary for recovery of the bat on Guam, and designation of critical habitat would help to protect these areas.

The Micronesian kingfisher, a subspecies endemic to Guam, was at one time found throughout most forests (Jenkins 1983). Up to 3,000 might have survived when the species was listed in 1984, but the kingfisher declined rapidly and it may be extinct in the wild today. However, a captive population has been established and is maintained at several mainland zoos including the Bronx, Philadelphia, and National Zoos. Once the brown tree snake is controlled or eradicated, progeny produced by this captive flock will be reintroduced to Guam. Adequate forest is essential for reintroducing the kingfisher. Designation of critical habitat would assure that suitable forest habitat remains for recovery of the kingfisher.

Three of the six forest species, all endemic to Guam, have not been observed in the wild for several years and may be extinct: The little Mariana fruit bat, Guam broadbill, and bridled white-eye. There have been no records of the little Mariana fruit bat since 1968. In 1983 the Guam broadbill was restricted to a small area at the north end of the island and the population was estimated at under 100 individuals. Since then, the broadbill has virtually disappeared from the island. Two sightings of individuals were made in 1984, one in March in Northwest Field and one in August adjacent to the Navy golf course in Barrigada (USFWS 1987b). A single broadbill was possibly heard in the Naval Communications area in 1988 (U.S. Navy 1989). Fewer than 50 bridled white-eyes were thought to survive in 1983. The last individual was observed in June 1983 (Beck 1984). If any of these three species still survive, they would require native forest similar to that needed by other forest species on Guam.

This proposed rule focuses on Guam populations of the six forest species that were listed in 1984 (all except the Mariana gallinule, Vanikoro swiftlet, and Guam rail). All six of the forest species have declined in numbers and distribution, and some may be extinct. The main cause of the decline at the time of listing was not certainly known, but probable causes included avian disease, predation by introduced animals, habitat loss, and, for the two species of fruit bats, hunting. It has become increasingly clear that for the endangered birds, predation by the introduced brown tree snake (*Boiga irregularis*) is the primary cause of the

decline (Savidge 1987). For fruit bats, hunting is still considered to be a serious threat, although the snake may be preying upon bats as well (Wiles 1987). Two recovery plans have been prepared for the six species, a Guam and Rota forest bird recovery plan (USFWS 1987a) and a fruit bat recovery plan (USFWS 1987b).

Description of Petitions

Two similar petitions requesting that critical habitat be designated for seven endangered species on Guam have been received by the Service. The seven species are the Mariana fruit bat, little Mariana crow, Guam Micronesian Kingfisher, Guam broadbill, Guam bridled white-eye, and Guam rail. The first petition, dated August 17, 1987, was from the Governor of Guam. Subsequently, on March 16, 1988, the Governor of Guam requested that his petition be considered under the emergency rule process. The Governor's request for designation of critical habitat was further supported by Resolution 339 of the Guam legislature dated May 19, 1988.

The second petition, dated December 31, 1987, was submitted jointly by the National Audubon Society and the Marianas Audubon Society and was forwarded to the Service under Sierra Club Legal Defense Fund letterhead. The petition requested designation of critical habitat on an emergency and permanent basis for the seven species. Both petitions requested that those areas delineated as essential habitat in the two recovery plans be designated as critical habitat for these species.

This proposed rule constitues the finding for these two petitions. The Service has determined that the designation of critical habitat for the Mariana fruit bat, little Mariana fruit bat, Mariana crow, Guam Micronesian kingfisher, Guam broadbill, and Guam bridled white-eye, is warranted. However, the Service has determined that the designation of critical habitat for the Guam rail is not prudent and therefore not warranted. The Guam rail is now believed to be extinct in the wild, but a captive flock has been established for eventual reintroduction to the wild. The rail has different habitat requirements than the other six species, and although it uses various types of forest habitat, it is more accurately described as an "edge" species (Jenkins 1979). Such areas are relatively common on Guam and under no threat. The occurrence of prime rail habitat is often dependent on the disturbance or clearing of forests by humans, and the location of such habitat commonly changes over time. These areas generally do not require special protection or management. There would be little or no benefit to the rail in designating critical habitat in these areas, and such action is not deemed prudent at this time.

Essential habitat described in the forest bird recovery plan is a strip of land on northern Guam extending north from Puntan Dos Amantes Park on the west coast, continuing around Ritidian Point, east to Pati Point, and finally extending south to Campanaya Point. Habitat in central and southern Guam is not specifically described in the forest recovery plan. Rather, the recovery plan states that essential habitat consisting of former historical range in central and southern Guam needs to be delineated, protected, and managed. No essential habitat is described for the Mariana crow on Rota. The recovery plan for the Guam fruit bats delineates essential habitat in both northern and southern Guam. In northern Guam, the essential habitat is the same as that described for forest birds. In southern Guam critical habitat includes the Naval Magazine, the Naval Reservation, the Bolanos Conservation Reserve, and a small strip of land above the 800-foot contour on the west side of the Naval Magazine and Reservation.

Emergency Rulemaking

The Service has determined that designation of critical habitat via the emergency rule process is not necessary. The requests for designation of critical habitat via the emergency rule process were triggered by the Navy's proposal to clear up to 1,800 acres (7.28 square km) of forest and construct a radar project in Northwest Field on Andersen Air Force Base. The proposed construction site for the project is within the areas identified as essential habitat for the recovery of the six endangered species. According to the petitioners, the Navy project could destroy and/or adversely modify up to 1,800 acres. This work was originally to have been done without the completion of an environmental impact statement. The Navy has now indicated that the project will remove considerably less than 1,800 acres, has decided to prepare a full environmental impact statement, and has entered into consultation with the Service pursuant to section 7(a)(2) of the Act.

Critical Habitat

The Service has evaluated the petitions and other information relative to this issue and concurs that designation of critical habitat for the forest species is warranted. The populations and ranges of these endangered species have decreased rapidly within the past 25 years and parts of former historical range are no longer occupied by them. Parts of these historical ranges are considered to be essential for recovery. A question has been raised as to the scope of Federal agency obligations under section 7(a)(2) of the Act if no listed species occurs on a proposed project site. Designation of these areas as critical habitat would insure that Federal agency actions would not destroy or adversely modify this critical habitat intended for use in future reintroduction programs.

Urbanization and development of private property on Guam continues rapidly. Land prices increased dramatically in the 1980's, due largely to Japanese investment. Tourism and human population continue to increase rapidly. Along with this are associated human-caused disturbances to the forest environment. Forest habitat is being directly destroyed for roads, houses, buildings, and other structures. Also, the increased traffic and human activity adversely modify forest habitat by causing increased disturbance to forest species.

Recovery plans for the endangered forest birds incorporate captive propagation programs for species such as the kingfisher. Captive propagation programs would produce progeny for eventual reintroduction into the wild when the brown tree snake has been controlled or eliminated. Essential forested areas must be protected and managed if they are to retain their value as future reintroduction sites.

There has been speculation over the possible relocation of Navy and Air Force facilities now in the Philippines to the Mariana Islands. Should it be necessary to move the bases to Guam, it would be of benefit to be aware of Federal lands that have been designated as critical habitat to promote recovery of Guam's endangered species. It should result in early consultation and enhance resolution of conflicting use issues.

Critical habitat, as defined by section 3(5) of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the

maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. In the case of the six species addressed in this proposed rule, critical habitat was not designated when the species were listed in 1984 because it was not deemed prudent and there would have been no net benefit to the species. The only Federal activity known to have a potential adverse effect on any of the species was the clearing of land by the U.S. Air Force in a portion of the Guam rail's habitat on Andersen Air Force Base. Other Federal agencies contemplating actions with potential adverse effects to endangered species could be informed by means other than a critical habitat determination. Such potential advese effects could be resolved through the consultation process as required by section 7(a)(2) of the Act. For these reasons discussed above, the Service now considers the designation of critical habitat on Guam to be prudent.

Section 4(a)(3)(B) of the Act allows for revision of critical habitat designation as appropriate. With the accelerated loss of forest habitat on Guam, the Service concurs that a proposed designation of critical habitat is appropriate for six of the seven endangered species covered by the petitions: The Mariana crow, Micronesian kingfisher, Mariana fruit bat, little Mariana fruit bat, Guam broadbill, and Guam bridled white-eye. The areas for which the Service proposes critical habitat designation are those identified as "high priority essential habitat" and "essential habitat" in the two recovery plans for these species. The total acreage of the proposed areas is approximately 16,893 acres (6,837 ha) in northern Guam and 7,669 acres (3,104 ha) in southern Guam. About 83% of the land within the proposed critical habitat of the six forest species on Guam is in Federal ownership and is under the jurisdiction of either the U.S. Navy or the U.S. Air Force. Approximately 14.5% is owned by the Government of Guam, while the remaining 3.5% is in private ownership.

Through the 1970's and early 1980's about 50,000 acres (20,235 ha) of suitable forest habitat was estimated to remain on Guam (Guam Division of Forestry and Soil Resources 1983). This is considered to be enough habitat to support recovered populations of the endangered forest species. This habitat was about equally divided between northern and southern Guam; based on 1975 aerial photography, about 25,000 acres remained on northern Guam (Engbring and Ramsey 1984). Much of the habitat was occupied by one or more of these species during the 1970's (Jenkins 1983), but population size and distribution were diminishing rapidly as a result of predation by the brown tree snake.

Extensive tracts of forest (more than a thousand acres) that are removed from intensive human disturbances are now becoming increasingly rare on Guam due to the cumulative effects of development. Furthermore, the pace of development has recently accelerated. Two large forested parcels remain, the forest at the northern end of the island (described as "essential habitat" and "high priority essential habitat" by the petitioners) and the forest in south-central Guam in and adjacent to the Naval Magazine. These two areas are essential to the conservation and recovery of endangered forest species on Guam. The Mariana crow, in particular, requires large, relatively isolated tracts of forest. The Service's Recovery Plan for the Native Forest Birds of Guam specifies essential habitat for the broadbill, white-eye, kingfisher, and crow. The Recovery Plan for the Marianas Fruit Bat and Little Marianas Fruit Bat specifies essential habitat for both bat species.

The area to be proposed as critical habitat includes forest and associated land and airspace in Guam and is precisely delineated as follows:

1. *Northern Guam.* (1) Those portions north and seaward of (a) a line from the westernmost tip of Amantes Point east to Wettengel Junction on Marine Drive; (b) Highway 3 from Wettengel Junction north to Potts Junctions; (c) Highway 9 from Potts Junction east to Salisbury Junction; and (d) the Andersen Air Force Base boundary from Salisbury Junction east to the coast. (2) All contiguous, coastal Government of Guam property from Anao Point to Campanaya Point including the Anao Conservation Reserve, lot numbers 7102, 7103, 7147, and the Lujuna portion of Lot Number A (the Asdonlucas portion of Lot Number A is excluded) (lot numbers from Government of Guam Land Registration Survey Plats). (3) The single private property inholding at Janum Point.

2. *Southern Guam.* Those portions including: (a) Naval Magazine; (b) Naval Reservation (Fena Valley Watershed); (c) the area above the 800-foot contour west of and abutting the Naval Magazine and the Naval Reservation; (d) the area abutting and between the Naval Magazine and Naval Reservation along the Maagas River, bounded on the east by a line beginning at the easternmost point of the Naval Magazine along the Maagas River and running southwest to the easternmost tip of the Naval Reservation south of the Tinechong River; and (e) the entire Bolanos Conservation Reserve, which is comprised of lot numbers 507, 508, and 509 (lot numbers from Government of Guam Land Registration Survey Plats).

The major constituent element is native and non-native forest, which is defined herein as those vegetation types in which the upper canopy is equal to or greater than 6 feet (2 m) high and is dominated by woody plant species. A number of roads, open fields, houses, runways, buildings, and other man-made structures are found within the boundaries outlined; however, only forested portions are being considered for proposed critical habitat designation.

The proposed areas referred to above include areas within the geographical area occupied by the species at the time they were listed as well as specific areas outside the geographical area occupied by the species at the time they were listed which are essential to the conservation of the species. In considering a designation of critical habitat, the Service focuses on the primary constituent elements (i.e., the physical and biologial features of the area that are essential to the conservation of the species) in defining critical habitat. In addition, the Service is required to list the known primary constitutent elements together with the description of any critical habitat that is designated (50 CFR 424.12(b)). In the case of the six Guam forest species, the proposed areas include the physical and biological features essential to the conservation of the species and require special management and protection. Physically, they consist of relatively contingnous tracts of a variety of forest types, including mature limestone forest, mixed woodlands, second growth strands, coastal stand forests, coconut forest, and ravine forests; these are all habitat types which are favored by the six endangered forest species. When isolated from excessive human disturbance, such forests biologically fulfill the stringent requirement of the Mariana crow and Mariana fruit bat in providing relatively large, contiguous tracts of forest with a minimum of human disturbance.

The area in southern Guam proposed for critical habitat has not recently supported forest birds, although a few Mariana fruit bats may still survive there. The ravine forests of this area were formerly used by all six species. They contain the physical and biological features essential for the recovery and conservation of these species. Because

the Guam broadbill, bridled white-eye, and probably the little Mariana fruit bat historically occupied this habitat, any animals still extant would be expected to thrive in this area once the effects of the brown tree snake are eliminated.

Designation of these areas as critical habitat would not only prevent jeopardy to the continued survival of those species which are currently restricted to a small fraction of their former historical range, but would provide habitat for reintroduction programs once the brown tree snake is controlled or eliminated. Species that may be reintroduced at some point in the future include the Micronesian kingfisher and possibly the Mariana crow and Mariana fruit bat. The key management consideration common to all of the the species is the elimination of the exotic brown tree snake, which was a major factor in the population declines of these species. Conservation and recovery of the Mariana fruit bat amd the Mariana crow, which are still known to be present in the wild, would be substantially enhanced through protection and management of portions of their former historical range in southern Guam.

Section 4(b)(8) of the act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such a designation. Actions that could adversely affect critical habitat for these species include the removal, destruction, or fragmentation of forest habitat and an increase in human-associated or human-induced disturbances. Specific actions that could adversely affect critical habitat include the clearing of forest for military construction project; the clearing of forest for private resorts, houses, or golf courses; military training exercises; and increased recreational activities within or adjacent to critical habitat. Destruction or alteration of forest on Guam could result in the extirpation of endangered forest species and/or preclude opportunities for recovery. Fragmentation of forest habitat with roads, buildings, or clearings could result in habitat patches too small to provide suitable nesting and foraging sites for such species as the Mariana crow. Increases in recreational activities, military training exercises, or other types of human activity could cause nest abandonment (for birds) or roost abandonment (for fruit bats), ultimately leading to decreased rates of reproduction and the loss of suitable habitat.

A variety of Federal agencies have jurisdiction and responsibilities within the areas proposed for designation as critical habitat for the six endangered forest species. In accordance with the provisions of the Act, section 7 consultations are required in cases where a Federal action may affect any of the six endangered Guam species, or section 7 conferences are required in case where a Federal action is likely to destroy or adversely modify their proposed critical habitat. Known project proposals within proposed critical habitat that could require (or have required) consultations or conferences for any of the reasons mentioned above include: Installation of "relocatable over-the-horizon-radars" (Navy); military training exercises (DOD); construction of resorts, golf courses, and other recreational facilities where Federal permits are required (Navy, Air Force, and Corps of Engineers); clearing of forest vegetation for roads, warehouses, and other military construction projects (DOD); increase or changes in recreational use of Federal properties (Navy, Air Force); the release or exchange of excess Federal property (Navy, Air Force). Although these projects have the potential for adverse effects on forest habitat, section 7 consultations almost invariably result in modification rather than curtailment of such projects, pursuant to the development of reasonable and prudent alternatives.

Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat. The Service is making this proposal to designated critical habitat on the basis of the best scientific information available and with additional relevant information that has been submitted from various sources. The Service solicited comments on the economic impacts of critical habitat designation from the Guam Bureau of Planning, the U.S. Navy, the U.S. Air Force, and Guam Urunao Resort Corporation. Telephone conversations and individual contacts have been made with local government officials, Federal and Guam agency personnel, and private business officials. The Service held a formal information meeting on Guam in June 1989. Information gathered has been incorporated into an economic analysis of the impacts of designating critical habitat.

Activities in the proposed critical habitat areas include military training exercises; hunting, hiking, camping, and related outdoor recreational activities; the collection of fruits, medicinal plants, and other traditional forest products; security checks by the military; and minor agricultural endeavors. Much of the forest is valuable as watershed that recharges reservoirs and the freshwater lens. There is no mining, ranching, timber harvest, or farming on Federal properties being considered for critical habitat designation on Guam. Several military construction projects, one major private resort, and the exchange or release of certain excess Federal properties have been proposed at various sites within the proposed critical habitat boundaries.

Several Federal and Government of Guam (GovGuam) agencies have jurisdiction over the activities within or near the proposed critical habitat areas. The Navy and the Air Force have expressed concern that the designation of critical habitat would affect currently proposed or future projects and asked to have various project areas removed from the critical habitat boundaries. GovGuam has expressed concern over the potential release of excess Federal property. Economic impacts attributable to critical habitat considerations for these projects are expected to be minimal. The Service has prepared an economic analysis of the areas being proposed for critical habitat in this rule. Details pertaining to specific proposals and activities are summarized below.

Private lands within proposed critical habitat are mostly forested and used for recreation, traditional collection of forest products, and the limited cultivation of crops. Most activities occurring on private lands do not require Federal approval and would not be affected by the designation of critical habitat. One major resort has been proposed by the Guam Urunao Resort Corporation, which has leased the right to develop private (Artero) property. Both the Mariana Crow and the Mariana fruit bat occur in this area and may be affected by the project. This project would require several Federal and GovGuam permits, including section 7 consultation under the Endangered Species Act, regardless of whether or not critical habitat is designated. The designation of critical habitat in and of itself is not expected to have any significant impact on the project. One other parcel or private property, the Castro property, is "landlocked" by military lands. This area harbors the Mariana Crow and the Mariana fruit bat, and projects in the area may affect these species. Landowners have requested an improved access easement, but no major projects have been proposed for this area. Federal permits are currently required to access this

property; the designation of critical habitat is not expected to have any significant impact above and beyond current permit requirements.

Actions for which foreseeable economic effects are likely to occur as a result of critical habitat designation are those of the U.S. Navy. The Navy proposes to build three "relocatable over-the-horizon" radar installations within the proposed critical habitat on Guam. If it becomes necessary to construct these facilities at an alternative site outside of critical habitat as a result of critical habitat designation, the cost could total approximately $100 million per site. One of the three projects does not now appear to be viable and is no longer being pursued by the military. If the other two facilities are built, it appears that various types of mitigation would be possible that would not force relocation to an alternate site. Total economic impact would be significantly lessened if this were the case.

A Federal action which might be affected by a critical habitat designation is the potential release of excess Federal property to GovGuam. Property identified as releasable in the past includes several areas that are partly or entirely within the proposed critical habitat boundaries. Whether any or all of the land is eventually released to GovGuam is speculative. The DOD may no longer consider certain Federal properties previously identified as excess to be releasable for a number of reasons, including: The possibility of relocating military facilities from the Philippines to Guam; the possible need for certain parcels on which to build radar sites; the potential relocation of the Naval Air Station to Andersen AFB; the tremendous increase in cost and general unavailability of land on Guam as a result of Japanese investment; and, the fact that various restrictions have been placed on Federal lands as a result of the listing of endangered forest species in 1984. The designation of critical habitat on Guam could "tie up" areas that the military had formerly considered suitable for development. The DOD might thus be less inclined to designate property as excess, under the expectation that the land will eventually be needed for military purposes.

If critical habitat is designated, there could be, via the section 7 process, conditions or restrictions placed on any land transfer. However, the release of most military lands on Guam would even now require consultation with the Service under section 7 of the Endangered Species Act, regardless of whether or not critical habitat is designated. Even the transfer of properties such as the Harmon Annex or South Finnegayan, now at the extreme southern portion of the range of the Mariana Crow and Mariana fruit bat, may affect these listed species. Mechanisms to preserve and protect forested areas on these tracts would probably be a condition of any such consultation. There would be no economic impact on the identification of and/or transfer of excess Federal land to GovGuam per se.

A still hypothetical project that could be affected by the designation of critical habitat is relocation of the Naval Air Station to Andersen AFB. The Naval Air Station currently shares runways with the Guam International Airport. Naval maintenance hangars, administrative buildings, and housing are all located on site. As the tourist industry has built up and the need for private airport facilities has increased, GovGuam has been seeking ways to expand the International Airport. A recent proposal has been to relocate the Naval Air Station to Andersen AFB, thus freeing Naval property at the airport for commercial development. The feasibility of such a move is being studied by the U.S. General Accounting Office. At least four potential sites have been identified on Andersen AFB for such a move. Three of these sites are entirely or largely within developed boundaries at Andersen, and critical habitat would have little or no economic effect on them.

The relocation of U.S. Navy and Air Force bases from the Philippines to Guam is a possibility that has been discussed in recent years, but the reality of any such move is conjectural. If either of the two large military facilities in the Philippines, Subic Bay or Clark AFB, are closed or moved, Guam would be a logical relocation site. Critical habitat could have an impact on such a move, but any attempt to place economic values on this scenario is premature.

The Navy is currently developing Natural Resource Management Plans for all of its installations on Guam. These plans will focus on the conservation of natural resources, including endangered species. Expanded hunting and fishing programs may be authorized in the future. A number of activities occur on Air Force land within the proposed critical habitat boundaries, including hunting, fishing, military training exercises, camping, picnicking, explosive ordnance disposal, and others. Most of these activities have been conducted for many years, and the designation of critical habitat would not be expected to significantly alter ongoing activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies and by various groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. Such actions have been initiated by the Service following the listing of the six Guam species in 1984. The protection measures provided to listed species by Federal agencies are summarized below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Several Federal agencies have jurisdiction and responsibilities within endangered forest species habitat, and section 7 consultations have been and will be required in a number of cases. Project proposals that could require or have undergone consultation are summarized under the Critical Habitat section above.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the pubilc, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to

be critical habitat as provided by section 4 of the Act;

(2) Current or planned activities in the subject area and their possible impacts on this species;

(3) Current or planned activities in the subject area and the projected economic costs associated with these activities.

The final decision on this proposed regulation on designating critical habitat for the six endangered forest species on Guam will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

Requests for a public hearing on this proposal must be recieved within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references sited herein is available upon request from the Service's Honolulu Field Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is John Engbring, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "Critical habitat" entry for six different species, including "Bat, little Mariana fruit," and "Bat, Mariana fruit," under MAMMALS, to read "17.95(a);" and "Broadbill, Guam," "Crow, Mariana," "Kingfisher, Guam Micronesian," and "White-eye, bridled," under BIRDS, to read "17.95(b)."

3. It is proposed to amend § 17.95(a) by adding critical habitat of the little Mariana fruit bat and Mariana fruit bat, in the same alphabetical order as the species occur in § 17.95(h); and it is proposed to amend § 17.95(b) by adding critical habitat of the Guam broadbill, Mariana crow, Guam Micronesian kingfisher, and bridled white-eye, in the same alphabetical order as the species occur in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(b) * * *

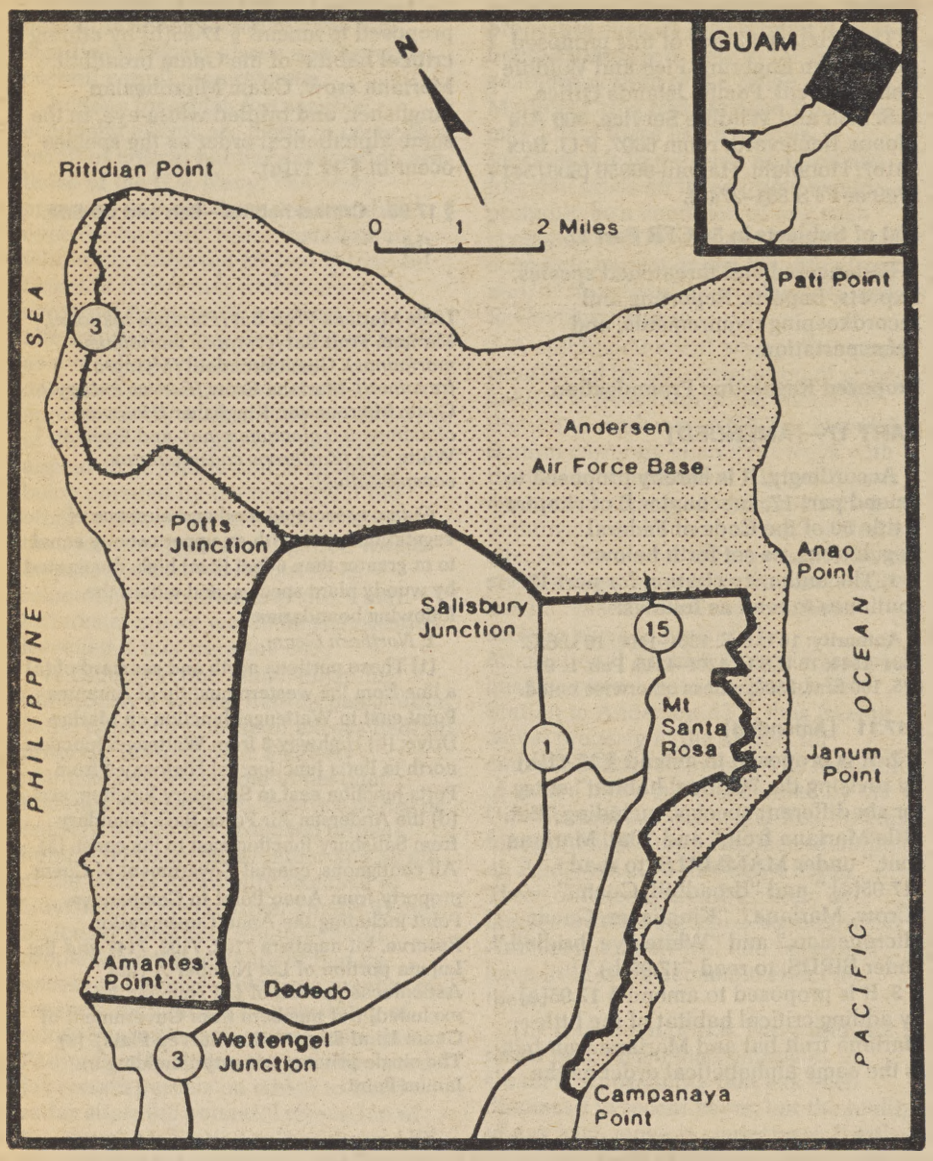
* * * * *

Little Mariana Fruit Bat *(Pteropus tokudae)*, Mariana Fruit Bat *(Pteropus mariannus mariannus)*, Guam Broadbill *(Myiagra freycineti)*, Mariana Crow *(Corvus kubaryi)*, Guam Micronesian Kingfisher *(Halcyon cinnamomina cinnamomina)*, and Bridled White-Eye *(Zosterops conspicillatus conspicillatus)*.

Guam: associated land and airspace of vegetation types with an upper canopy equal to or greater than 6 feet (2 m) high, dominated by woody plant species, and within the following boundaries:

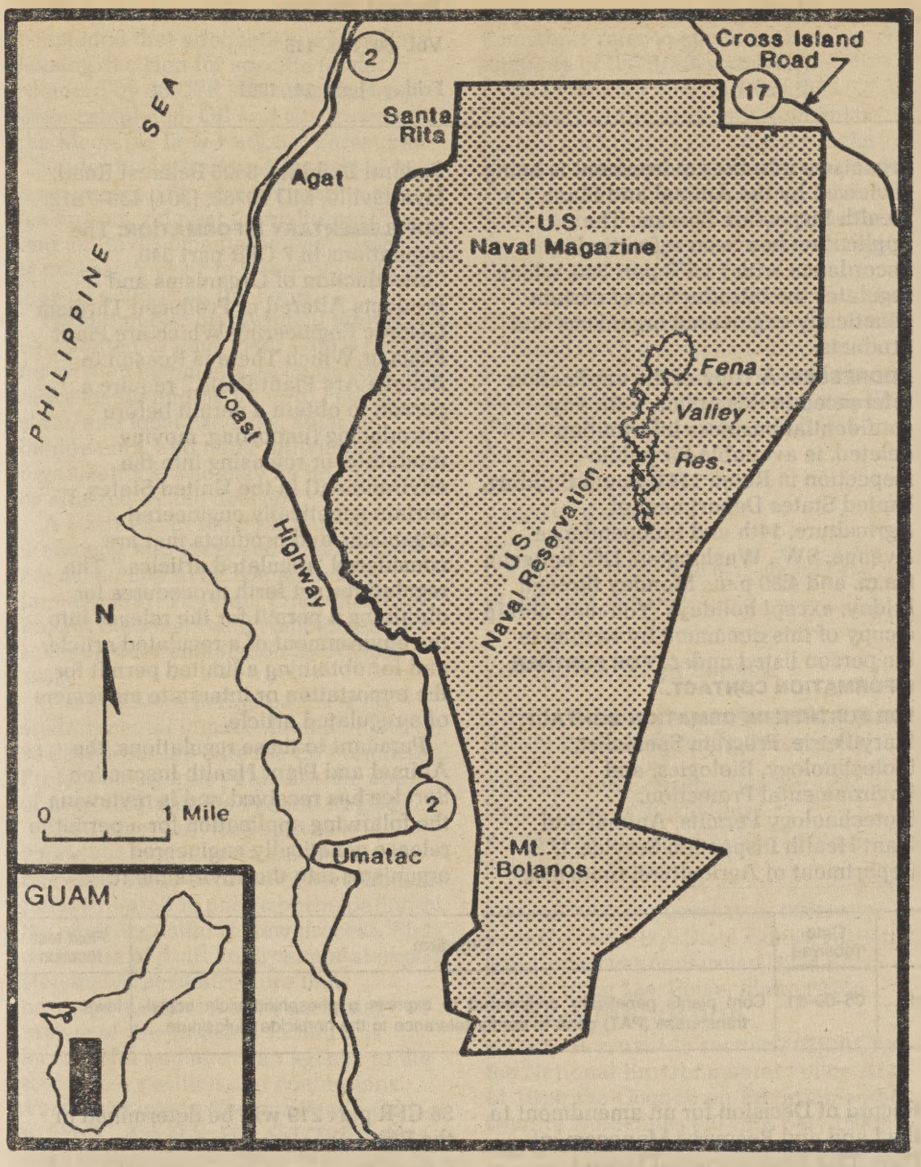
1. *Northern Guam.*

(1) Those portions north and seaward of (a) a line from the westernmost tip of Amantes Point east to Wettengel Junction on Marine Drive; (b) Highway 3 from Wettengel Junction north to Potts Junction; (c) Highway 9 from Potts Junction east to Salisbury Junction; and (d) the Andersen Air Force Base boundary from Salisbury Junction east to the coast. (2) All contiguous, coastal Government of Guam property from Anao Point to Companaya Point including the Anao Conservation Reserve, lot numbers 7102, 7103, 7147 and the Lujuna portion of Lot Number A (the Asdonlucas portion of Lot Number A is excluded) (lot numbers from Government of Guam Land Registration Survey Plats). (3) The single private property inholding at Janum Point.



2. *Southern Guam.*

Those portions including: (a) Naval Magazine; (b) Naval Reservation (Fena Valley Watershed); (c) the area above the 800-foot contour west of and abutting the Naval Magazine and the Naval Reservation; (d) the area abutting and between the Naval Magazine and Naval Reservation along the Maagas River, bounded on the east by a line beginning at the easternmost point of the Naval Magazine along the Maagas River and running southwest to the easternmost tip of the Naval Reservation south of the Tinechong River; and (e) the entire Bolanos Conservation Reserve, which is comprised of lot numbers 507, 508, and 509 (lot numbers from Government of Guam Land Registration Survey Plats).



Dated: May 16, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-14180 Filed 6-13-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 115
Friday, June 14, 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

Animal and Plant Health Inspection Service

[Docket 91-079]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in Room 1141, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-129-01.....	Holden's Foundation Seeds, Incorporated	05-09-91	Corn plants genetically engineered to express a phosphinothricin acetyl-transferase (PAT) gene to confer tolerance to the herbicide glufosinate..	Iowa.

Done in Washington, DC, this 11th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-14188 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Amendment to the Land and Resource Management Plan for the Medicine Bow National Forest and Thunder Basin National Grassland; Campbell, Converse, Crook, Niobrara, and Weston Counties, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Medicine Bow National Forest and Thunder Basin National Grassland is initiating actions to prepare an Environmental Impact Statement and Record of Decision for an amendment to the Land and Resource Management Plan. This Environmental Impact statement will assess alternative actions to be taken for oil and gas development on the Thunder Basin National Grassland, 572,224 acres. The Record of Decision will make two decisions. The availability for leasing decision, required by Forest Service regulation, title 36 CFR 228.102(d) and the site specific leasing decision, required by Forest Service regulation, title 36 CFR 228.102(e) to lease or not lease and the conditions of the lease for the lands made available by the first decision. Implementation of the leasing decision will authorize the Bureau of Land Management to offer the lands to be leased at public auction. The initial review of the scope of this amendment indicates that appendix D, Standard and Special Stipulations for Mineral Leasing will be updated. Whether or not this will constitute a significant amendment per 36 CFR part 219 will be determined in the EIS.

DATES: Comments concerning the scope of the analysis should be received in writing by August 15, 1991.

ADDRESSES: Send written comments to Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest and Thunder Basin National Grassland, 605 Skyline Drive, Laramie, Wyoming 82070.

FOR FURTHER INFORMATION CONTACT: Terry B. Dilts, Oil and Gas Team Leader, (307) 745-8971.

SUPPLEMENTARY INFORMATION: The Land and Resource Management Plan for the Medicine Bow National Forest and Thunder Basin National Grassland was approved November 20, 1985. April 20, 1990 the new Forest Service regulations (36 CFR parts 228 and 261) to accomplish the purposes of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 went into effect. A review of the Forest Plan for compliance with the

new regulations was made and concluded that adequate analysis for a leasing decision for specific lands required by 36 CFR 228.102(e) had not been completed. Oil and gas leasing on the Medicine Bow National Forest and Thunder Basin National Grassland has been suspended. The completion of a leasing amendment to the Forest Plan and an Environmental Impact Statement is necessary prior to future oil and gas leasing actions on the Forest.

Formal public involvement efforts will be initiated in June, 1991, with a request for written comments given through the news media and by letter to Federal, state, and local agencies, adjacent landowners, and other individuals or organizations who may be interested in or affected by the decision.

A Draft Environmental Impact Statement and Proposed Amendment are scheduled to be completed by January 1991. The final Environmental Impact Statement and Amendment are scheduled for completion by August 1992.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage because of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *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 objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Those having comments now are invited to submit them to Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest and Thunder Basin National Grassland.

Dated: June 3, 1991.

Gerald G. Heath,

Forest Supervisor.

[FR Doc. 91-14154 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Oneida County Critical Area Treatment RC&D Measure Oneida County, ID

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho 83705, telephone (208) 334-1601.

NOTICE. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oneida County Critical Area Treatment RC&D Measure, Oneida County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

Oneida County Critical Area Treatment RC&D Measure will stabilize a road that washes out during heavy spring runoffs and summer storms. The measure will prevent sediment and gravel from depositing on fields adjacent to the road. Planned treatments to stabilize the road include rock riprap and road paving.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be revised by contacting Mr. Paul Calverley. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publications in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 6, 1991.

Rodney M. Alt

Acting State Conservationist

[FR Doc. 91-14155 Filed 6-13-91; 8:45 am]

BILLING CODE 3410-16

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on June 27, 1991, at the Hilton Inn West, 401 South Meridian, Oklahoma City, Oklahoma 73108. The Committee will discuss civil rights issues and plan future projects in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Dr. Earl Mitchell or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 10, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-14169 Filed 6-13-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-307-803]

Notice of Initiation of Antidumping Duty Investigation: Gray Portland Cement and Clinker From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: David C. Smith, Office of Antidumpting Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3798.

Initiation

The Petition

On May 21, 1991, the Ad Hoc Committee of Florida Producers of Gray Portland Cement (the Ad Hoc Committee) filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing gray portland cement and clinker. In accordance with 19 CFR 353.12, the petitioner alleges that imports of gray portland cement and clinker from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a regional U.S. industry (Florida).

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the regional U.S. industry producing gray portland cement and clinker. If any interested party, as described in 19 CFR 353.2(k)(3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

The petitioner's estimate of United States Price (USP) is based on the findings of a market research consultant, for Type I gray portland cement, sold at FOB, port of export prices for July 1990. Type I cement is a general use cement as defined by the American Society of Testing Materials (ASTM). The Ad Hoc Committee was unable to determine the extent of applicable deductions for inland freight and loading/unloading charges, if any, and therefore has not reduced USP for any such charges. The petitioner reduced USP for brokerage charges based on an interview with a Venezuelan customs broker who reported that FOB, port of export prices are inclusive of brokerage fees averaging two percent.

The Ad Hoc Committee's estimate of Foreign Market Value (FMV) is also based on the findings of a market research consultant. The market research consultant reported home market price quotations for "Portland I" cement, the home market product it considers to be most similar to the Type I cement exported to the United States, both in terms of characteristics and uses.

The petitioner obtained ex-factory price quotations for Portland I cement for July 1990 and converted those prices to United States currency using rates published by the International Monetary Fund. The Ad Hoc Committee reduced FMV by 15 percent to account for discounts generally given to large customers.

Based on a comparison of USP and a discounted FMV, the Ad Hoc Committee has alleged a dumping margin of 31 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on gray portland cement and clinker from Venezuela and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Venezuela are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are gray portland cement and clinker. Gray portland cement and clinker are currently classified under subheadings 2523.29 and 2523.10 of the *Harmonized Tariff Schedule* (HTS). Gray portland cement has also been entered under HTS subheading 2523.90 as "other hydraulic cements." Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also included within the scope of this investigation; microfine cement is not included within the scope of this investigation. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 5, 1991, whether there is a reasonable indication that imports of gray portland cement and clinker from Venezuela are materially injuring, or threaten material injury to, a regional U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before October 28, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14217 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-201-003]

Ceramic Title From Mexico; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Reviews.

SUMMARY: On March 7, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty order on ceramic tile from Mexico. We have now completed these reviews and determine the total bounty or grant during the period January 1, 1988 through December 31, 1988 to be zero or *de minimis* for 11 firms and 1.14 percent *ad valorem* for all other firms. In addition, we determine the total bounty or grant during the period January 1, 1989 through December 31, 1989 to be 0.40 percent *ad valorem* for all firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 9677) the preliminary results of its administrative reviews of the countervailing duty order on ceramic tile from Mexico (47 FR 20012; May 10, 1982). The Department has now completed these administrative reviews in accrodance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the 1988 review period, such merchandise was classifiable under item numbers 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated (TSUSA). During the 1989 review period, this merchandise was classifiable under item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000 and 6908.90.0000 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and 11 programs: (1) FOMEX; (2) FOGAIN; (3) CEPROFI; (4) Article 15 loans; (5) State tax incentives; (6) NDP preferential discounts; (7) Bancomext loans; (8) Delay of payments on loans; (9) Delay of payments to PEMEX of fuel charges; (10) Import duty reductions and exemptions; and (11) FONEI.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. On April 8, 1991, we received written comments from two respondents, Ceramica Regiomontana, S.A., and Industrias Intercontinental, S.A.

Comment 1: The respondents contend that the Department does not have the legal authority to impose countervailing duties on ceramic tile from Mexico and must revoke the countervailing duty order. Effective April 23, 1985, the date of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the Understanding), the United States Trade Representative designated Mexico a "country under the Agreement" as defined in section 701 of the Tariff Act. Since Mexico is now a "country under the Agreement," section 303 of the Tariff Act is no longer applicable to any merchandise from Mexico. The United States Trade Representative did not exclude existing countervailing duty orders from the application for "country under the Agreement" status. Therefore, section 701 entitles Mexico to a determination by the International Trade Commission (ITC) that imports of the subject merchandise are materially injuring or threatening material injury to a United States industry producing a like product. Pursuant to section 701, the Department cannot impose countervailing duties on any merchandise from Mexico without an affirmative ITC injury determination. Since there has been no affirmative injury determination with respect to ceramic tile from Mexico, the Department cannot impose countervailing duties and should revoke the order effective April 23, 1985.

Resondents further contend that the Department's failure to revoke this order is inconsistent with past practice. In two previous countervailing duty administrative reviews, Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 9, 1985), where an outstanding countervailing duty order was issued pursuant to section 303(a)(1) without benefit of an ITC injury determination, the Department determined that it did not have the authority to impose countervailing duties when events subsequent to the issuance of the order required an affirmative ITC injury determination prior to imposition of countervailing duties.

Merchandise subject to an outstanding countervailing duty order, issued pursuant to section 303(a)(1) without benefit of an ITC injury determination, is entitled to an injury test when there is a change in the status of the merchandise or the country. Since the ITC has indicated that it does not have the legal authority to conduct an injury investigation concerning merchandise already subject to a countervailing duty order, the Department has in the past concluded that it could not impose countervailing duties and revoked, or preliminarily determined to revoke, the order effective the date the affirmative injury determination became a requirement.

Department's Position: We fully addressed this issue in the previous administrative review of this countervailing duty order. See Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 50744; December 10, 1990). The respondents have provided neither new evidence nor new arguments that convince us to reconsider our position on this issue.

Comment 2: The respondents contend that, for the 1988 review period, the Department incorrectly calculated the country-wide countervailing duty rate applicable to non-*de minimis* companies by excluding companies with zero or *de minimis* aggregate benefits from its calculations. In *IPSCO, Inc.* and *IPSCO Steel* v. *United States*, 899 F.2d 1192 (Fed. Cir. 1990) (*IPSCO*), the Court of Appeals for the Federal Circuit (CAFC) ruled that the countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise, including those companies that receive little or no subsidy. While it is appropriate for the Department to exclude companies with zero or *de minimis* aggregate benefits from the assessment of countervailing duties, these companies must be included in any calculation of the weighted-average subsidy applicable to the remaining non-*de minimis* companies, and the assessment rate found in the preliminary results of the 1988 review period should be recalculated accordingly.

Department's Position: We disagree. In calculating the benefits received during both review periods, we followed

the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 53325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits of all companies to determine the overall subsidy benefitting exports of the subject merchandise to the United States; we did not ignore zero or *de minimis* rates, consistent with the CAFC holding in *IPSCO*. The weighted-average country-wide rate for the 1989 review period was 0.40 percent *ad valorem* or *de minimis*. Therefore, the Department will not assess countervailing duties for this period and will waive the collection of cash deposits of estimated countervailing duties.

Because the country-wide rate for the 1988 review period was above *de minimis*, we proceeded to the next step in our analysis and examined the *ad valorem* rates that we had calculated to determine whether individual company rates differed significantly from the weighted-average country-wide rate. There were 11 companies with zero or *de minimis* benefits, by definition significantly different from the country-wide rate, and they must be treated separately for assessment purposes. Ceramica Regiomontana's and Industrias Intercontinental's rates were not significantly different and, consistent with our regulations and established Department practice, their company rates were included in our calculations to establish the "all other" rate for the 1988 review period. See, *e.g.*, Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 50746; December 10, 1990); Certain Cotton Yarn Products from Brazil; Final Results of Countervailing Duty Administrative Review (55 FR 3446; February 1, 1990).

Contrary to respondent's contention, *IPSCO* does not preclude the establishment of an "all other" rate for Ceramica Regiomontana and Industrias Intercontinental for the purposes of the 1988 review. In *IPSCO*, the CAFC was only addressing the first step in this process, the measurement of the overall subsidy and the establishment a country-wide rate. In that particular case, the CAFC found that the Department had erroneously excluded nine companies with zero or *de minimis* benefits from its calculation of the country-wide rate. Because the country-wide rate when properly calculated proved to be *de minimis*, the CAFC did not have to reach the second step whereby the Department ascertains whether any company's individual benefit differs significantly from the country-wide rate. Consistent with these procedures, our calculations for the 1989 review period resulted in a country-wide benefit that was *de minimis*, and we concluded our analysis at this point.

Finally, to the extent that the language respondents quote from *IPSCO* is applicable here, our calculation of a 1.14 percent "all other" rate does not conflict with the CAFC's holding that any countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise to the United States. Because the non-*de minimis* companies, including Ceramica Regiomontana and Industrias Intercontinental, are being assessed countervailing duties at a rate directly attributable to the benefits received on their exports, and 11 companies are not being assessed countervailing duties, the Customs Service will collect a lesser amount of countervailing duties than it would have if we had applied a country-wide rate to the exports of all companies. To apply the lower country-wide rate to Ceramica Regiomontana's and Industrias Intercontinental's exports while waiving assessment on the 11 zero or *de minimis* companies' exports, as the respondents argue, would result in a gross undercollection of countervailing duties.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant during the period January 1, 1988 through December 31, 1988 to be zero or *de minimis* for 11 firms and 1.14 percent *ad valorem* for all other firms. In addition, we determine the total bounty or grant during the period January 1, 1989 through December 31, 1989 to be 0.40 percent *ad valorem* for all firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The following 11 firms received zero or *de minimis* benefits during the 1988 review period:

(1) Azulejos Decorativos Carillo
(2) Azulejos Orion
(3) Ceramica Santa Julia
(4) Eduardo S. Garcia de la Pena
(5) Internacional de Ceramica
(6) Jesus Garza Arocha
(7) Ladrillera Monterrey
(8) Pisos Coloniales de Mexico, S.A.
(9) Pisos de Barro
(10) Reynold Martinez Chapa
(11) Teofilo Covarrubias Villareal

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 11 firms listed above and to assess countervailing duties of 1.14 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after January 1, 1988 and on or before December 31, 1988. In addition, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from all firms exported on or after January 1, 1989 and on or before December 31, 1989.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 7, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-14218 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-804]

Notice of Initiation of Countervailing Duty Investigation: Gray Portland Cement and Clinker From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Ross Cotjanle, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 or 377-3534.

Initiation

The Petition

On May 21, 1991, the Ad Hoc Committee of Florida Producers of Gray Portland Cement filed with the Department of Commerce (the Department) a countervailing duty petition on behalf of the United States industry producing gray portland cement and clinker ("cement"). In accordance with 19 CFR 355.12, the petitioner alleges that manufacturers, producers or exporters of cement in Venezuela receive bounties or grants within the meaning of section 701 of the Tariff Act

of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a regional U.S. industry (Florida).

In past countervailing duty investigations, Venezuela was considered to be a "country under the Agreement" within the meaning of section 701(b)(3) of the Act. As such, Title VII of the Act applied in those investigations, and the U.S. International Trade Commission (ITC) was required to determine whether imports of the subject merchandise from Venezuela materially injured, or threatened material injury to, a U.S. industry.

On August 31, 1990, Venezuela became a contracting party to the General Agreement on Tariffs and Trade (GATT). Since qualification as a "country under the Agreement" under section 701(b)(3) requires that the GATT not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party and the merchandise included within the scope of this investigation is nondutiable, the petitioner is nonetheless required to allege that, and the ITC is required to determine whether, pursuant to section 303(a)(2), imports of such merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 355.2(i), and because it has filed the petition on behalf of the U.S. industry producing cement. If any interested party, as described in 19 CFR 355.2(i) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

Allegations of Bounties or Grants

Petitioner lists a number of practices by the Government of Venezuela which allegedly confer bounties or grants on manufacturers, producers or exporters of a cement. We are initiating an investigation of the following programs.

A. *Fund for Financing Exports ("FINEXPO") Programs*
- *Export Bond Program*
- *Short-term Financing*
- *Preferential Export Financing*
- B. *Preferential Tax Incentives*

C. *Financing Company of Venezuela ("FIVCA") Loans*

Initiation of Investigation

Under 19 CFR 355.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the bases on which a countervailing duty may be imposed under section 303 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on cement from Venezuela and find that it meets the requirements of 19 CFR 355.13(a). Therefore, we are initiating a countervailing duty investigation to determine whether Venezuelan manufacturers, producers or exporters of cement receive bounties or grants.

In accordance with 19 CFR 355.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice.

The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

The products covered by this investigation are gray portland cement and clinker. Gray portland cement and clinker are currently classified under subheadings 2523.29 and 2523.10 of the Harmonized Tariff Schedule (HTS). Gray portland cement has also been entered under subheading 2523.90 as "other hydraulic cements." Gray portland cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Oil well cement is also included within the scope of this investigation; microfine cement is not included within the scope of this investigation. Although the HTS subheadings are prodived for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 5, 1991, whether there is a reasonable indication that imports of cement from Venezuela are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before August 14, 1991, unless the investigation is terminated pursuant to 19 CFR 355.17 or the preliminary determination is extended pursuant to 19 CFR 355.15.

This notice is published pursuant to section 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: June 10, 1991.

Marjorie A Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14219 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council, its Shallow-Water Reef Fish Fishery Management Plan (FMP) Committee, and the Council's Administrative Committee will hold separate public meetings. The meetings will be held on June 25–28, 1991, at the Colegio de Ingenieros y Agrimensores de Puerto Rico, Antolin Nin and Skerret Streets, Roosevelt, Hato Rey, Puerto Rico. Fishermen and other interested persons are invited to attend. The public will be allowed to submit oral or written statements regarding the agenda items.

The Council's Administrative Committee will meet on June 26, from 10 a.m., until approximately 5 p.m., to discuss Council operations matters.

The Reef Fish Fishery Management Plan Committee will meet on June 26, from 9:30 a.m. until 5 p.m., to discuss results of the public hearings concerning the Shallow-Water Reef Fish Fishery Regulatory Amendment. There will be simultaneous interpretation services (English-Spanish) at this meeting and the Council following meeting.

The Council will begin its 73rd regular public meeting on June 27, from 9 a.m., until 5 p.m., and continue the meeting on June 28, from 9 a.m. until 12 noon, to discuss the Shallow-Water Reef Fish FMP and the Coral FMP, among other topics.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco Popular Building, (formerly the Banco de Ponce Building), suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

Dated: June 7, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-14149 Filed 6-13-91; 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 will hold a public meeting on June 24-28, 1991, at the Anchorage Hilton Hotel, in Anchorage, AK. The meeting will begin on June 24 at 8 a.m., and run through June 28.

The Council will consider the following agenda items: (1) Reports by the Alaska Department of Fish and Game, by the National Marine Fisheries Service (NMFS), and by the U.S. Coast Guard and a report on international fisheries ; (2) Review and approve for Secretarial Review an analysis on inshore/offshore allocations; (3) Review and approve for Secretarial Review an analysis of individual fishing quota options for the sablefish fisheries; (4) Review and approve for public review an analysis of individual fishing quota options for the halibut fishery; (5) Report from NMFS on procedures and requirements necessary to develop a moratorium on entry into all fisheries under the Council's jurisdiction, except salmon, and to develop individual fishing quota systems for those fisheries. A general moratorium on entry to all groundfish fisheries off Alaska will also be examined; (6) Review and approve a user-fee system for submission to the Secretary of Commerce; (7) Development of a bycatch amendment for the groundfish fisheries off Alaska, and a joint statement of concern over salmon bycatch; (8) Approve amendments to the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fishery management plans for Secretarial review; (9) Review marine mammal amendments and Steller sea lion recovery plan; (10) review recent court decision on Anti-Reflagging Act of 1987; (11) Review of herring by catch management and effectiveness of special closed areas; (12) Consider industry request to increase total allowable catch for deepwater flatfish in the central Gulf of Alaska to 35,000 mt.; (13) Initial consideration of any proposed changes in groundfish seasons and recordkeeping/reporting requirements for 1992; (14) Pollock apportionment to midwater trawls in the Bering Sea/Aleutian Islands; and (15) Schedule for analyzing quarterly cod allocations in the Bering Sea/Aleutian Islands.

The Council's Bycatch Committee will meet on Sunday, June 23, at 8 a.m., at the location stated above. The Council's Advisory Panel and the Scientific and Statistical Committee will also begin its meetings on Sunday, June 23, at 10:30 a.m., at the location above. Other committee and workgroup meetings may be held on short notice during the meeting week. All meetings are open to the public, except a Council executive session which is tentatively scheduled for June 26.

FOR MORE INFORMATION CONTACT: Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: June 10, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-14150 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on June 18-21, 1991, at the Metro Center, 2000 SW. First Avenue, room 440, Portland, OR. The GMT will begin its meeting on June 18 at 1 p.m., and will adjourn on June 21 by 12 noon.

The GMT will discuss the status of the proposed license limitation program, a change in California state set net regulations, preliminary stock assessments for four groundfish species, status reports and catch projections for several groundfish species, and management proposals for the 1992 fishing year. The GMT will prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

FOR MORE INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: June 7, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-14151 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings on June 24-28, 1991, at the Holiday Inn Oceanfront; 1617 N. First Street, Jacksonville Beach, FL., telephone number: (904) 249-9071.

The Council is scheduled to review comments from the wreckfish limited entry public hearings and from the National Marine Fisheries Service, Southeast Region, before deciding on which options for limited entry will be included in Amendment #5 to the Snapper-Grouper Fishery Management Plan.

The Snapper-Grouper Committee will discuss extending the emergency prohibition on longline gear in the wreckfish fishery another 90 days, review a snapper-grouper stock assessment and reports on spawning seasons and the survivability of released fish.

The Shrimp Committee will continue developing a management plan for white shrimp. Additional proposed regulations for the plan will be discussed, such as closing Federal waters to shrimping at the request of states when state waters are closed and prohibiting royal red and rock shrimp fishing when the white shrimp fishery is closed. Public hearings for the plan will be held before the end of the year. A detailed agenda will be available to the public on or about June 12.

FOR MORE INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: June 7, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-14152 Filed 6-13-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 11, 1991.

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

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

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 48268, published on November 20, 1990.

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

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 11, 1991.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on June 18, 1991, you are directed to amend further the directive dated November 14, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Categories not subject to a group	
218	10,191,653 square meters.
219	2,063,764 square meters.
300/301	3,487,672 kilograms.
333	79,112 dozen.
369–H [2]	4,259,868 kilograms.
410	1,919,942 square meters of which not more than 1,539,040 square meters shall be in Category 410–A [3] andnot more than 1,539,040 square meters shall be in Category 410–B [4].
433	22,594 dozen.
434	12,873 dozen.
435	23,646 dozen.
436	14,712 dozen.
438	25,747 dozen.
440	36,782 dozen of which not more than 21,018 dozen shall be in Category 440–M [5].
442	40,986 dozen.
444	196,855 numbers.
447	76,522 dozen.
448	21,511 dozen.
607	2,780,611 kilograms.
614	10,251,253 square meters.
615	21,074,095 square meters.
617	14,910,914 square meters.
659–C [6]	361,690 kilograms.
669–P [7]	1,636,590 kilograms.
833	23,409 dozen.
840	425,237 dozen.
846	155,792 dozen.
Group II 330, 332, 349, 353, 354, 359–O [8], 431, 432, 439, 459, 630, 632, 643, 644, 653, 654 and 659–O [9], as a group.	115,052,342 square meters equivalent.
Group IV 832, 834, 836, 838, 839, 843, 844, 850–852, 858 and 859, as a group.	25,095,195 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 369–H: Only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[3] Category 410–A: Only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[4] Category 410–B: Only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[5] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[6] Category 659–C: Only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 669–P: Only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[8] Category 359–O: All HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[9] Category 659–O: All HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–14168 Filed 6–13–91; 8:45 am]

BILLING CODE 3510–DR–F

COMMISSION OF FINE ARTS

Change of Meeting Date

The Commission of Fine Arts, next meeting is changed from Thursday, 20 June 1991 at 10 a.m. to *Wednesday, 26 June 1991* at 10 a.m. in the Commission's offices in the Pension Building, Suite 312,

Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 7 June 1991.

Charles H. Atherton,

Secretary.

[FR Doc. 91–14131 Filed 6–13–91; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On January 18, April 19 and 26, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 50576, 16075 and 19352) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Surgical Pack, Gown & Towel, 6532–01–018–3286.

Services

Janitorial/Custodial, Naval Training Center Complex, Orlando, Florida.

Janitorial/Custodial, Federal Building and U.S. Courthouse, 1800 Fifth Avenue, North, Birmingham, Alabama.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 91–14213 Filed 6–13–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be provided by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing the blind or other severely handicapped. It is proposed to add the following services to the Procurement List:

Ground Maintenance, Department of Energy, Western Area Power Administration, Bismarck District Office, Bismarck, North Dakota.

Janitorial/Custodial, BLM Fairbanks Offices and Fire Operations Building, Fort Wainwright & University Avenue, Fairbanks, Alaska.

Janitorial/Custodinal, U.S. Post Office and Courthouse, Dubuque, Iowa.

Janitorial/Custodial, U.S. Army Reserve Centers, #1—9 Chisolm Street, #2—1050 Remound Road, Charleston, South Carolina

Janitorial/Custodial, Federal Building, 7th & Lafayette Streets, Moundsville, West Virginia.

Janitorial/Custodial, Social Security Administration, 16th & Chapeline Streets, Wheeling, West Virginia.

G. John Heyer,

General Counsel.

[FR Doc. 91–14214 Filed 6–13–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee Task Force on Soviet Military

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee Task Force on Soviet Military will meet in closed session on 28 June 1991 from 0900 until 1600 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board Task Force on Soviet Military is to study developments in the Soviet Union that affect the Soviet Military and make recommendations on policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: June 10, 1991

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14145 Filed 6–13–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Review of the Biological Defense Research Program

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Review of the Biological Defense Research Program will meet in closed session on July 22-23, 1991 at Ft. Detrick, Maryland.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will analyze both foreign capabilities and our own defensive program.

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

Dated: June 10, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14141 Filed 6-13-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Joint Precision Interdiction (JPI)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Precision Interdiction (JPI) will meet in closed session on June 27–28, 1991 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review acquisition strategies needed for an optimum family of surveillance, reconnaissance, and target acquisition systems, C3I systems and weapon systems required to perform the JPI mission.

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

Dated: June 10, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14142 Filed 6-13-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Weapon Development and Production Technology will meet in open session on 11 and 12 July 1991 at Fort McNair, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive briefings on manufacturing processes related to improving weapon development strategies.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Kimzey at (703) 695-7580.

Dated: June 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14143 Filed 6-13-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Amend a Record System

AGENCY: Department of the Navy, DoD.

ACTION: Amend a Record System.

SUMMARY: The Department of the Navy proposes to amend one existing system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective on July 15, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (703) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the **Federal Register** as follows:

51 FR 12908 Apr. 16, 1986
51 FR 18086 May 16, 1986 (DON Compilation changes follow)
51 FR 19884 Jun. 3, 1986
51 FR 30377 Aug. 26, 1986
51 FR 30393 Aug. 26, 1986
51 FR 45931 Dec. 23, 1986
52 FR 2147 Jan. 20, 1987
52 FR 2149 Jan. 20, 1987
52 FR 8500 Mar. 18, 1987
52 FR 15530 Apr. 29, 1987
52 FR 22671 Jun. 15, 1987
52 FR 45846 Dec. 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun. 8, 1988
53 FR 25363 Jul. 6, 1988
53 FR 39499 Oct. 7, 1988
53 FR 41224 Oct. 20, 1988
54 FR 8322 Feb. 28, 1989
54 FR 14378 Apr. 11, 1989
54 FR 32682 Aug. 9, 1989
54 FR 40160 Sep. 29, 1989
54 FR 41495 Oct. 10, 1989
54 FR 43453 Oct. 25, 1989
54 FR 45781 Oct. 31, 1989
54 FR 48131 Nov. 21, 1989
54 FR 51784 Dec. 18, 1989
54 FR 52976 Dec. 26, 1989
55 FR 21910 May 30, 1990 (Navy Mailing Addresses)
55 FR 37930 Sep. 14, 1990
55 FR 42758 Oct. 23, 1990
55 FR 47508 Nov. 14, 1990
55 FR 48678 Nov. 21, 1990
55 FR 53167 Dec. 27, 1990
56 FR 424 Jan. 4, 1991
56 FR 12721 Mar. 27, 1991

The amendment is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific change to the system of records is set forth below followed by the system of records notice published in its entirety, as amended.

Dated: June 10, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12950-5

System name:

Navy Civilian Personnel Data System (NCPDS), (54 FR 45787, October 31, 1989).

Changes:

* * * * *

Categories of records in the system:

In line 37, after the word "(EPMIS)" add ", the Complaints Action Tracking System,".

* * * * *

N12950-5

SYSTEM NAME:

Navy Civilian Personnel Data System (NCPDS).

SYSTEM LOCATION:

Office of Civilian Personnel Management (OCPM) and its field offices; operating civilian personnel offices and Navy commands and management offices; and the Navy Regional Data Automation Center (NARDAC) and its designated contractors. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems notices. Included in this notice are those records duplicated for retrievability at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Navy civilian employees paid from appropriated and non-appropriated funds and foreign national direct and indirect hire employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is comprised of automated and non-automated records describing and identifying the employee (e.g., name, Social Security Number, sex, birth date, minority designator, citizenship, physical handicap code); the position occupied and the employee's qualifications; salary and salary basis or other compensation and allowances; employee's status in relation to the position occupied and the organization to which assigned; tickler dates for impending changes in status; education and training records; previous military status; functional code; previous employment record; performance appraisal and other data needed for screening and selection of an employee; referral records; professional licenses and publications; and reason for position change or other action affecting the employee and case files pertaining the EEO, MSPB, labor and employee relations, and incentive awards. The records are those found in the NCPDS subsystems: The Navy Automated Civilian Manpower Information System (NACMIS), the Training Information Management System (TIMS), the Personnel Automated Data System (PADS), the Computerized Employee Management Program Administration and Research (CEMPAR), Office of Civilian Personnel Management Customer Support Centers, the Executive Personnel Management Information System (EPMIS), the Complaints Action Tracking System (CATS), and the NCPDS base level and Headquarters systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4116; Executive Order 9397; 5 U.S.C. 2951; Executive Order 10450; 42 U.S.C. 2000e, 5 U.S.C. 3135, 5 U.S.C. 4301, et. seq., 5 U.S.C. 4501 et. seq., 5 U.S.C. 4705 and subparts D, E, F, and G of title 5 U.S.C. and 29 CFR part 1613 et. seq.

PURPOSE(S):

To manage and administer the Department's civilian personnel and civilian manpower planning programs and in the design, development, maintenance and operation of the automated system of records. Designated contractors of the Department of the Navy and Defense in the performance of their duties with respect to equipment and system design, development test, operation and maintenance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office.

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of Executive Branch agencies. To officals and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties related to the screening and selection of candidates for vacant positions. To representatives of the United States Department of Labor on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice training programs or on other such matters under the jurisidction of the Labor Department.

To representatives of the Department of Veterans Affairs on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice and on-the-job training program.

To contractors or their employees for the purpose of automated processing of data from employee personnel actions and training documents, or data collection forms and other documents. To a duly appointed hearing examiner or arbitrator in connection with an employee's grievance. To an appointed Administrative Judge for the purpose of conducting a hearing in connection with an employee's formal Equal Employment Opportunity (EEO) complaint.

To officials and employees of schools and other institutions engaged to provide training.

To labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

To representatives of the Federal Labor Relations Authority.

To representatives of the Merit Systems Protection Board.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape, disc, drum and punched cards and computer printouts. Manual records are stored in paper file folders.

RETRIEVABILITY:

Information is retrieved by Social Security Number or other similar substitute if there is no Social Security Number, position number, name, or by specific employee characteristics such as date of birth, grade, occupation, employing organization, tickler dates, academic specialty level.

SAFEGUARDS:

The computer facility and terminal are accessible only to authorized persons that have been properly screened, cleared and trained. Manual and automated records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Input documents are destroyed after data are converted to magnetic medium. Information is stored in magnetic medium within the ADP system. Information recorded via magnetic medium will be retained permanently. For TIMS and the apprentice programs the computer magnetic tapes are permanent. Manual records are maintained on a fiscal year basis and are retained for varying periods from one to five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civilian Personnel Management, 800 North Quincy Street.

Arlington, VA 22203–1998 and the commanding officers at the employee's activity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 or to the civilian personnel officer under his/her congnizance. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

The request should contain the individual's full name, Social Security Number and name of employing activity. Requesters may visit the civilian personnel office at the naval activity covered by the system to obtain information. In such case, proof of identity will consist of full name, Social Security Number and a third positive identification such as a driver's license, Navy building pass or identification badge, birth certificate, Medicare card, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 or to the civilian personnel officer under his/her cognizance. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

The request should contain the individual's full name, Social Security Number and name of employing activity. Requesters may visit the civilian personnel office at the naval activity covered by the system to obtain information. In such case, proof of identity will consist of full name, Social Security Number and a third positive identification such as a driver's license, Navy building pass or identification badge, birth certificate, Medicare card, etc.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Categories of sources of records in this system are: the civilian personnel office of the employing activity; the payroll office; OCPM headquarters; the security office of the employing activity; line managers, other designated officials and supervisors; the employee and persons named by the employee as references.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–14144 Filed 6–13–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.103]

Training Program for Special Programs Staff and Leadership Personnel; Inviting Applications for Fiscal Year 1991

Purpose: Provides funding through a cooperative agreement to an institution of higher education, or other public or private nonprofit institution or organization for the conduct of a workshop for the Special Programs for Students from Disadvantaged Backgrounds (Student Support Services, Upward Bound, Talent Search, Educational Opportunity Centers, Ronald E. McNair Post-Baccalaureate Achievement, and the Training Program for Special Programs Staff and Leadership Personnel programs) that reviews and reinforces administrative and management practices essential to effective program operations.

Deadline for Transmittal of Applications: July 30, 1991.

Application Availability: June 18, 1991.

Available Funds: $400,000.

Estimated Range of Award: $400,000.

Estimated Average Size of Award: $400,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 15 months.

Applicable Regulations: (a) The Training Program for Special Programs Staff and Leadership Personnel Regulations, 34 CFR part 642, and (b) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Funding Priorities: Under 34 CFR 75.105(c)(3) of the Education Department General Administrative Regulations (EDGAR) and 34 CFR 642.34 of the program regulations, the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet these absolute priorities:

(1) Strategies for preparing students for doctoral studies; and

(2) Reporting student and project performance.

For Applications of Information Contact: May J. Weaver, U.S. Department of Education, 400 Maryland Avenue, SW., room 3060, ROB #3, Washington, DC 20202–5249. Telephone: (202) 708–4804. 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.

Program Authority: 20 U.S.C. 1070d, 1070d–1d.

Dated: June 7, 1991.

Michael Farrell,

Acting Assistance Secretary for Postsecondary Education.

[FR Doc. 91–14212 Filed 6–13–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Notification for Proposed Removal Action at the Feed Materials Production Center, Fernald, OH

AGENCY: Department of Energy.

ACTION: Notice of Floodplain involvement and opportunity to comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes a removal action to manage the radioactively contaminated groundwater in an area south of the Feed Materials Production Center (FMPC) located near Fernald, Ohio. The removal action is required under a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sections 120 and 106(a) Consent Agreement between DOE and the U.S. Environmental Protection Agency (EPA). The fundamental objective of the removal action is to protect public health by limiting access to and use of groundwater with uranium concentrations exceeding the DOE-derived concentration limit for uranium in drinking water. The proposed action would involve the installation of groundwater pumping wells and a transfer pump station, at grade, in the 100-year floodplain. In addition, an underground discharge line would be installed, leading north from the pump station to the FMPC, and from there eastward to an outfall in the Great Miami River. The line running north

would be about 9,000 feet long, of which 730 feet would be in the 100-year floodplain. The outfall line would be approximately 4,400 feet long, most of which would be in the 100-year floodplain. Also, an underground pipeline would be installed to two industries located in the 100-year floodplain. Approximately 3,300 feet of this pipeline would be in the 100-year floodplain. The proposed action would be carried out with the concurrence of the U.S. EPA and the Ohio EPA. The action would be performed in such a manner as to avoid or minimize impacts to the 100-year floodplain. Preliminary calculations indicate that only about 8 acres out of a total of 1,600 acres in the 100-year floodplain from Mile 19 to Mile 24 of the Great Miami River would be affected. As a result, there would be a minimal change in the downstream elevation. In accordance with DOE regulations 10 CFR part 1022, DOE would prepare a floodplain assessment to be included in the Engineering Evaluation/Cost Analysis-Environmental Assessment, which would be available for public inspection in the Administrative Record and will be distributed in accordance with 40 CFR 1506.6(b). Maps and further information are available from DOE at the address shown below.

DATES: Comments must be received by DOE at the following address July 1, 1991.

ADDRESSES:

Mail comments to: Mr. Jack C. Craig, DOE, Fernald Site Office, FMPC Remedial Action Project Director, P.O. Box 398705, Cincinnati, Ohio 45239-8705.

Fax comments to: (513) 738-6650.

Issued in Washington, DC, this 7th day of June, 1991.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91-14347 Filed 6-12-91; 2:25 pm]

BILLING CODE 6540-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-14; Certification Notice—82]

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 baseload 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. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has a filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Cabot Power Corporation, Boston, MA	05-30-91	Combine Cycle	235	Everett, MA.

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants 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 June 10, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-14224 Filed 6-13-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of May 3 Through May 10, 1991

During the Week of May 3 through May 10, 1991, the appeals and applications for exception of other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

(Week of May 3 through May 10, 1991)

Date	Name and location of applicant	Case No.	Type of submission
May 7, 1991	ERA/Dane Energy, Houston, TX	LRZ-0015	Interlocutory order. If granted: The Proposed Remedial Order issued to Dane Energy would be modified regarding interest on overcharges.
Do	Gulf/D.J. Adams, Washington, DC	RR300-37	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 10, 1988 Decision and Order (Case No. RF300-7164) issued to D.J. Adams would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Beaver Fuel Oil & Heating, Washington, DC	RR300-47	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-455) issued to Beaver Fuel Oil & Heating would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Bookens Fuel Service, Inc., Washington, DC	RR300-31	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 9, 1989 Decision and Order (Case No. RF300-459) issued to Bookens Fuel Service, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Budney Fuel Oil Company, Washington, DC	RR300-38	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-456) issued to Budney Fuel Oil Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Carpenter & Smith, Inc., Washington, DC	RR300-40	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 17, 1989 Decision and Order (Case No. RF300-685) issued to Carpenter & Smith Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/De Sonsa Oil & Service Corporation, Washington, DC.	RR300-48	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4168) issued to De Sonsa Oil & Service Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Dowling Fuel Company, Washington, DC	RR300-32	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 5, 1989 Decision and Order (Case No. RF300-8024) issued to Dowling Fuel Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Dunkirk Aviation Sales & Service, Inc., Washington, DC.	RR300-45	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-640) issued to Dunkirk Aviation Sales & Service, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Fingies Fuel Corporation, Washington, DC	RR300-29	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 6, 1988 Decision and Order (Case No. RF300-3350) issued to Fingies Fuel Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Fitch Oil Company, Inc., Washington, DC	RR300-26	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-4981) issued to Fitch Oil Co., Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Benjamin A. Franklin Gulf, Washington, DC	RR300-49	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-639) issued to Benjamin A. Franklin Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/A Giordano & Sons, Inc., Washington, DC	RR300-33	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 12, 1988 Decision and Order (Case No. RF300-2677) issued to A. Giordano & Sons Inc. Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Harvey Russell & Sons, Inc., Washington, DC	RR300-43	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4166) issued to Harvey Russell & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Joy Oil Company, Washington, DC	RR300-27	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 17, 1989 Decision and Order (Case No. RF300-690) issued to Joy Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Liberty Fuel Oil Company, Washington, DC	RR300-28	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 31, 1989 Decision and Order (Case No. RF300-7167) issued to Liberty Fuel Oil Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 3 through May 10, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Do	Gulf/Jos. A. Majka & Sons, Inc., Washington, DC	RR300-23	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300-5010) issued to Jos. A. Majka & Sons would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Miller & Shenk, Inc., Washington, DC	RR300-46	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4167) issued to Miller & Shenk, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Charles F. Ober & Sons, Inc., Washington, DC	RR300-35	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 30, 1989 Decision and Order (Case No. RF300-9350) issued to Charles F. Ober & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Obergfell Fuel, Inc., Washington, DC	RR300-36	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1991 Decision and Order (Case No. RF300-458) issued to Obergfell Fuel, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Reid's Heating Service, Washington, DC	RR300-42	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4165) issued to Reid's Heating Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Stern Brothers, Inc., Washington, DC	RR300-39	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 10, 1989 Decision and Order (Case No. RF300-3739) issued to Stern Brothers, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Van Varick & Sons, Inc., Washington, DC	RR300-30	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 4, 1988 Decision and Order (Case No. RF300-6908) issued to Van Varick & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Walter E. Schwab Company, Washington, DC	RR300-50	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-638) issued to Walter E. Schwab Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Warren Handley, Washington, DC	RR300-24	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300-5185) issued to Warren Handley would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Woolley Fuel Company, Washington, DC	RR300-25	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300-4162) issued to Woolley Fuel Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Fred D. Wikoff Company, Washington, DC	RR300-34	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 17, 1989 Decision and Order (Case No. RF300-689) issued to Fred D. Wikoff Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Williams Oil Company, Inc., Washington, DC	RR300-44	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 5, 1989 Decision and Order (Case No. RF300-8021) issued to Williams Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 8, 1991	Gulf/Northern Illinois Gas Company, Washington, DC	RR272-72	Request for modification/rescission in the Crude oil refund proceeding. If granted: The April 8, 1989 Decision and Order (Case No. RF272-19930) issued to Northern Illinois Gas Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
May 9, 1991	Kirkpatrick & Lockhart, Washington, DC	LFA-0118	Appeal of an information request denial. If granted: Kirkpatrick & Lockhart would receive access to copies of records pertaining to license agreements & royalties, fees, payments, and the criteria for setting the royalties, fees or payments in connection with a specified patent.
Apr. 10, 1991	Gulf/Stephen H. Sack, Washington, DC	RR300-22	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 17, 1991 Decision and Order (Case No. RF300-6092) issued to Stephen H. Sack would be modified regarding his application for refund submitted in the Gulf refund proceeding.

Refund Applications Received

[Week of May 3 to May 10, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/07/91	Henderson Implement & Oil Co..	RF326-268
5/07/91	Spruce Oil Corporation.	RF326-269
5/07/91	Wilma Claudine Jenkins.	RF335-1
5/07/91	Harkleroad Oil Company.	RF304-12283
5/08/91	Vick Oil Company	RF326-270
5/08/91	Chicago Transit Authority.	RC272-118
5/08/91	BN Transport, Inc..	RF304-12284
5/08/91	Santa Fe Trail Trans. Co.	RF304-12285
5/08/91	Pacific Intermountain Express.	RF304-12286
5/08/91	Hill & Hill Truck Lines, Inc.	RF304-12287
5/09/91	Cabot Corporation.	RF304-12288
5/09/91	Farmex Oil Grain Co-Op.	RA272-41
5/10/91	Gulf States Paper Corporation.	RA272-40

Refund Applications Received—Continued

[Week of May 3 to May 10, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/10/91	Ada Oil Co.	RF326-271
5/10/91	Coral Petro. Inc. Crdtr Trust.	RF332-8
5/03/91 thru 5/10/91.	Gulf Oil Refund Applications Received.	RF300-16657 thru RF300-16719
5/03/91 thru 5/10/91.	Texaco Refund Applications Received.	RF321-15015 thru RF321-15110
5/03/91 thru 5/10/91.	Crude Oil Applications Received.	RF272-89312 thru RF272-89323

[FR Doc. 91-14225 Filed 6-13-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of May 10 Through May 17, 1991

During the Week of May 10 through May 17, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 110 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by The Office of Hearings and Appeals

[Week of May 10 through May 17, 1991]

Date	Name and location of applicant	Case no.	Type of submission
May 13, 1991	Linda Loiacano, Metairie, LA	LFA-0121	Appeal of an information request denial. If granted: The April 24, 1991 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and Linda Loiacano would receive access to DOE information.
Do	Texaco/Turbyfill Texaco, Hardin, KY	RR321-63	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 23, 1990 Decision and Order (Case Nos. RF321-1863, RF321-3208 and RF321-5773) issued to Turbyfill Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Do	James L. Schwab, Spokane, WA	LFA-0120	Appeal of an information request denial. If granted: The May 2, 1991 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and James L. Schwab would receive access to DOE information.
Do	James L. Schwab, Spokane, WA	LFA-0119	Appeal of an information request denial. If granted: The May 1, 1991 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and James L. Schwab would receive access to all information pertaining to an investigation which was not previously made available to him.
May 14, 1991	East River Corporation, Milford Mgt. Corp., Parkchester Mgt. Corp., Woods Mgt. Co., Washington, DC.	RR272-73, RR272-74, RR272-75, RR272-76	Request for modification/rescission in the Crude Oil refund proceeding. If granted: The February 27, March 27, April 10, and March 7, 1991 Decisions and Orders (Case Nos. RF272-45581, RF272-8337, RF272-64604 and RF272-10164) issued to East River Corporation, Millford Mgt. Corp., Parkchester Mgt. Corp., and Woods Mgt. Co. would be modified regarding the firms' Applications for Refund submitted in the Crude Oil refund proceeding.
May 15, 1991	Energy Research Corporation, Danbury, CT	LFA-0122	Appeal of an information request denial. If granted: The April 6, 1991 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Energy Research Corporation would receive access to DOE information.
Do	Gulf/Buddy's Fuel Oil Service, Washington, DC	RR300-65	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 10, 1988 Decision and Order (Case No. RF300-2671) issued to Buddy's Fuel Oil Service would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Burch Oil Company, Inc., Washington, DC	RR300-51	Request for modification/rescission in the Gulf refund proceeding. If granted: The June 23, 1989 Decision and Order (Case No. RF300-8415) issued to Burch Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.

List of Cases Received by The Office of Hearings and Appeals—Continued

[Week of May 10 through May 17, 1991]

Date	Name and location of applicant	Case no.	Type of submission
Do	Gulf/C.R. Quesenberry, Inc., Washington, DC	RR300-56	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 27, 1991 Decision and Order (Case No. RF300-5218) issued to C.R. Quesenberry, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Carolina Fuel Oil Company, Washington, DC	RR300-59	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300-5193) issued to Carolina Fuel Oil Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Charlottesville Oil Company, Inc., Washington, DC.	RR300-54	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 26, 1990 Decision and Order (Case No. RF300-9366) issued to Charlottesville Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Davidson Ice & Fuel Company, Inc., Washington, DC.	RR300-60	Request for modification/rescission in the Gulf refund proceeding. If granted: The January 6, 1989 Decision and Order (Case No. RF300-3571) issued to Davidson Ice & Fuel Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Franco Distributors, Inc., Washington, DC	RR300-63	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 12, 1989 Decision and Order (Case No. RF300-827) issued to Franco Distributors, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/J. Ray Hunter, Inc., Washington, DC	RR300-58	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 28, 1989 Decision and Order (Case No. RF300-7877) issued to J. Ray Hunter, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Kelleher Corporation, Washington, DC	RR300-55	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300-5192) issued to Kelleher Corporation would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/S.H. Tevis & Son, Inc., Washington, DC	RR300-52	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 18, 1989 Decision and Order (Case No. RR300-5254) issued to S.H. Tevis & Son, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Sherrill Ice & Fuel Company, Washington, DC	RR300-62	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300-4987) issued to Sherrill Ice & Fuel Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Rainbow Oil Company, Inc., Washington, DC	RR300-66	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 26, 1989 Decision and Order (Case No. RF300-5221) issued to Rainbow Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Steffey & Findlay, Inc., Washington, DC	RR300-53	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 15, 1989 Decision and Order (Case No. RF300-452) issued to Steffey & Findlay, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Thomlinson & McWhite, Inc., Washington, DC	RR300-64	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300-5014) issued to Thomlinson & McWhite, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Vails & Way Company, Gulf/Don Gantt Oil Company, Gulf/Etheridge Oil Company, Gulf/Walker Oil Company, Gulf/Coy Jackson, Jr., Inc., Washington, DC.	RR300-67, RR300-68, RR300-69, RR300-70, RR300-71	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 7, 1990 Decision and Order (Case Nos. RF300-9373, RF300-9374, RF300-9375, RF300-9376, RF300-9378) issued to Vails & Way Company, Don Gantt Oil Co., Etheridge Oil Co., Walker Oil Co., and Coy Jackson, Jr., Inc. would be modified regarding the firms' Applications for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Wellman Oil Company, Inc., Washington, DC	RR300-61	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 13, 1989 Decision and Order (Case No. RF300-5220) issued to Wellman Oil Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Gulf/Woodford Oil Company, Washington, DC	RR300-57	Request for modification/rescission in the Gulf refund proceeding. If granted: The August 11, 1989 Decision and Order (Case No. RF300-5481) issued to Woodford Oil Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of May 10 to May 17, 1991]

Date received	Name of firm	Case No.
5/13/91	Orange & Rockland Util.	RF336-2
5/13/91	M.I. Hoffman & M. Buller.	RF335-2
5/13/91	Pioneer Oil Company.	RF337-1
5/13/91	Lone Star Producing Company.	RF326-272
5/13/91	Globe Mfg. Company.	RF336-1
5/14/91	Cora Mitchell	RF335-3
5/14/91	Bill Gilmore	RF335-4
5/14/91	Rock Creek Industries.	RF326-273
5/10/91 thru 5/17/91	Gulf Oil Refund Applications Received.	RF300-16720 RF300-16768
5/10/91 thru 5/17/91	Texaco Refund Applications Received.	RF321-15111 RF321-15306
5/10/91 thru 5/17/91	Crude Oil Applications Received.	RF272-89324 RF272-89342
5/16/91	Georgia Power Co.	RF336-3
5/16/91	Erie Oil	RF333-8
5/16/91	Stewart P. Wilson Inc.	RF333-9
5/17/91	Providence Rd. Shell.	RF315-10146

[FR Doc. 91-14226 Filed 6-13-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 1 Through April 5, 1991

During the week of April 1 through April 5, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Firearms Training Systems, Inc., 4/2/91, LFA-0105

Firearms Training Systems, Inc., filed an Appeal from a denial by the Inspector General of a Freedom of Information Request. The appellant sought records of a pending investigation into a complaint that had been made by the appellant alleging improper use of its proprietary information. In his determination, the Inspector General found that the requested information fell within the scope of Exemption 7(a), which exempts from mandatory disclosure documents whose release could interfere with enforcement proceedings. The DOE rejected the appellant's contention that because it wants the investigation to proceed, release of the documents to it would not compromise the investigation. The DOE noted that the identity of a requester is irrelevant to whether documents must be released pursuant to the FOIA, and consequently, if the Inspector General released the requested documents to the appellant, it would then have to release the same material to any other requester. The DOE also noted that release of investigatory files to a complainant could, under some circumstances, allow the complainant to interfere with the investigation in a manner that would favor its position. However, the DOE found that the Inspector General's determination was deficient, because it did not give either a specific list or a general description of the withheld documents. Accordingly, the Appeal was granted in part and the matter was remanded to the Inspector General for a new determination that adequately describes the withheld documents and gives specific reasons why their release could interfere with the investigation.

Remedial Order

Mutual Petroleum Marketing Co., et al., 4/4/91, KRO-0340

Mutual Petroleum Marketing Co., Inc. (MPM), Mutual Petroleum Marketing Co. of California, Inc. (MPM-California), Mutual Petroleum Marketing Co. of Texas, Inc. (MPM-Texas), and Louisiana Bayou Oil Corporation (Bayou) filed Statements of Objections to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to them on September 8, 1986. In the PRO, the ERA alleged that during the period July 1974 through December 1980 these firms committed separate violations of one or more of the following regulations: 10 CFR 212.93 (the Subpart F Permissible Average Markup or PAM regulation); 10 CFR 212.183 (the Subpart L PAM regulation); 10 CFR 212.186 (the layering regulation); and 10 CFR 210.62(c) and 205.202 (the normal business practices rule and anti-circumvention regulation). As an initial matter, the DOE accepted the ERA's requests to amend the PRO to eliminate the Subpart L PAM violations with respect to MPM and to substantially reduce MPM's alleged Subpart F PAM violation. The DOE next determined that the ERA had misapplied 10 CFR 212.111 in determining MPM's lawful selling price. Accordingly, the DOE dismissed the findings of price violations with respect to MPM. In considering the other respondents' objections, the DOE rejected several challenges to the procedural and substantive validity of the Subpart L PAM and layering regulations on the grounds that no new arguments had been presented that would cause it to reconsider determinations in previous cases. The DOE found that the ERA had not erred in treating MPM, MPM-California, and Bayou as separate firms for purposes of applying the price rule; that the ERA is not estopped from asserting a Class C resellers violation against MPM-California and Bayou, and that MPM-California had failed to establish any factual errors in the PRO's calculations. Accordingly, the DOE found that the PAM violations against MPM-California and Bayou should be upheld. The DOE also rejected MPM-Texas' argument that its crude oil trading activities did not constitute purchases and sales of crude oil for purposes of the DOE reseller regulations. In addition, the DOE found that PRO's interpretation of the layering rule was correct and that MPM-Texas, the respondents, had presented no evidence to refute the ERA's prima facie showing that it had provided no traditional and historical reseller services to its customers. The DOE concluded that the PRO's findings of layering with respect to MPM-Texas should be upheld and, therefore, it would not be efficient to determine the applicability of the normal business practices and anti-circumvention rules to the firm. Finally, the DOE modified the PRO to ensure that any monies collected would be distributed under the procedures of 10 CFR part 205, subpart V. The amount of the overcharges sustained in the Decision and Order totals $30,772,845.27.

Refund Applications

Anheuser-Busch Companies, Inc., 4/4/91, RF272-592, RD272-592

The DOE issued a Decision and Order concerning an Application for Refund submitted by Anheuser-Busch Companies, Inc. (Anheuser-Busch). The firm requested a refund based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981, pursuant to the provisions of 10 CFR part 205, subpart V (subpart V). A consortium of 28 states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's claim. The DOE determined that Anheuser-Busch's rights to a subpart V crude oil refund had been waived because two of its affiliates had executed a waiver and release and had received refunds from either the Rail and Water Transporters Escrow or the Surface Transporters Escrow. Thus, the affiliates and Anheuser-Busch are precluded from

seeking a subpart V crude oil refund. Therefore, the Application for Refund was denied and the States' Objections and Motion for Discovery were dismissed.

Dobbs Houses, Inc., 4/5/91, RF272–77497

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Dobbs Houses, Inc., (Dobbs) based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Dobbs was acquired by The Greyhound Corporation (Greyhound), a bus company that executed the Surface Transporters Escrow Settlement Claim Form and Waiver, in November 1987. Because Dobbs was acquired after August 7, 1986 (the Surface Transporters Escrow Account Payment Date), the DOE determined that Dobbs' right to a crude oil refund had not been waived and that the firm was eligible to receive a refund of $1,745.

Exxon Corporation/Karas Speedy Car Wash, Inc., 4/2/91, RF307–10178

The DOE issued a Decision and Order rescinding two refunds that were granted to Donald Kuhn *sub nom.* Karas Speedy Car Wash, (Case No. RF307–514) and Karas Car Wash, Inc. (Case No. RF307–515). After the two refunds were granted, the DOE discovered that Mr. Kuhn did not own the retail outlet in question during the period of time for which he sought a refund. For this reason and because Mr. Kuhn was unable to show that he was otherwise entitled to a refund for a period of time during which he did not own the outlet, the refunds previously granted to him were rescinded.

Henry G. Meigs, Inc., 4/5/91, RF272–70440

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Henry G. Meigs, Inc., (Meigs) for a portion of its purchases of liquid asphalt, No. 6 fuel oil, and No. 2 fuel oil during the crude oil price control period. The DOE held that the portion of Meigs' purchases that were resold were ineligible as a basis for a refund, because Meigs had not submitted a detailed showing of injury for these purchases. However, the refined petroleum products that Meigs used in a non-petroleum-related business distinct from its reseller operations (cement production) were considered eligible for a refund under the end-use presumption of injury. Accordingly, Meigs received a refund of $63,312.

Jack B. Kelley, Inc., 4/5/91, RF272–75162

The DOE issued a Decision and Order denying an Application for Refund filed by Jack B. Kelley, Inc. (Kelley), in the Subpart V crude oil special refund proceeding. The DOE's denial was based on the fact that Kelley had applied for and had been granted a refund from the Surface Transporters Escrow and had, thereby, waived its right to a refund in the crude oil proceeding.

State of South Dakota, 4/1/91, RF272–19457

The DOE issued a Decision and Order concerning an Application for Refund that the State of South Dakota (South Dakota) filed in the crude oil fund being disbursed by the DOE under 10 CFR part 205, subpart V. The DOE determined that the refund claim was meritorious and granted a refund of $141,104. Philip P. Kalodner (Kalodner), counsel for Utilities, Transporters, and Manufacturers, filed Comments and Conditional Objections to South Dakota's Application for Refund. The DOE determined that Kalodner's Comments and Objection was insufficient to rebut the presumption of end-user injury. South Dakota will be eligible for additional refunds as additional crude oil overcharge funds become available.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A.P. Green Refractories Co.	RF272–10456	04/05/91
A.P. Green Refractories Co.	RD272–10456	04/01/91
Agway, Inc./Universe Oil *et al.*	RF324–0005	04/01/91
Atlantic Richfield Co./ Bill's Arco *et al.*	RF304–10900	04/01/91
Atlantic Richfield Co./ Bob Tinsley Arco *et al.*	RF304–9407	04/01/91
Atlantic Richfield Co./ Thomas O. Ash *et al.*	RF304–3357	04/03/91
Atlantic Richfield Co./ Walter's Arco *et al.*	RF304–11309	04/01/91
Atlantic Richfield Company/Major Oils.	RR304–11	04/03/91
Evangelical Free Church of America.	RF272–69117	04/05/91
Roman Catholic Archbishop of Boston.	RF272–69368	
Exxon Corporation/ Red Carpet Car Wash.	RF307–10138	04/04/91
Fruehauf Corp	RF272–23184	04/01/91
Fruehauf Corp	RD272–23184	
Gangloff & Downham Trucking Co., Inc.	RF272–75786	04/03/91
Gateway Foods of Twin Ports, Inc.	RF272–64205	04/04/91
Gulf Oil Corp./ McGuire's Gulf Service.	RF300–16323	04/05/91
Gulf Oil Corp./J. Howard Craver.	RF300–11530	04/03/91
Gulf Oil Corp./Miller Gulf *et al.*	RF300–7963	04/03/91
Gulf Oil Corp./Rebel Enterprises *et al.*	RF300–11159	04/04/91
Hawthorn Mellody, Inc.	RF272–28349	04/05/91
Hawthorn Mellody, Inc.	RD272–28349	
QO Chemicals, Inc	RF272–64300	04/04/91
QO Chemicals, Inc	RD272–64300	
Great Lakes Chemicalcorporation.	RF272–64360	
Great Lakes Chemicalcorporation.	RD272–64360	
Republic Industries Liquidating Trust.	RF272–64984	04/04/91
Republic Industries Liquidating Trust.	RD272–64984	
Shell Oil Co./Payne Tire Co., *et al.*	RF315–10019	04/05/91
Tesoro Petroleum Corp./City of Bryan *et al.*	RF326–9	04/01/91
Texaco Inc./Matherly Oil Co. *et al.*	RF321–2255	04/03/91
Texaco Inc./Morrison Oil Co., Inc.	RF321–5614	04/05/91
Morrison Oil Co., Inc	RF321–5615	
Morrison Oil Co., Inc	RF321–5616	
Morrison Oil Co., Inc	RF321–5617	
Morrison Oil Co., Inc	RF321–5618	
Morrison Oil Co., Inc	RF321–5848	
Texaco Inc./Ronald P. Jenkins.	RF321–14688	04/05/91

Dismissals

The following submissions were dismissed:

Name	Case No.
29–45 Tenants Corp	RF272–52855
BN Transport, Inc	RF321–12541
Brookfield Bus Tours, Inc	RF307–10164
Burrell's Fuel	RF300–14821
Crestwood Gulf	RF300–14266
Gold Beach School Dist	RF272–80752
Illinois-California Express	RF321–13239
Inwood Gardens, Inc	RF272–52848
J.F. Cleckley & Co	RD272–75221
Lily Truck Leasing Corp	RF272–70483
McLaughlin and Schultz, Inc	RD272–75223
Panola Co	RF272–75692
Queens Garden, Co	RF272–56264
Simpson Timber Co	RF272–59053
Vi-Jon Laboratories, Inc	RF272–18858

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence

Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. The are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–14227 Filed 6–13–91; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order; Week of May 20 through May 24, 1991

During the week of May 20 through May 24, 1991, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full test of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals

Ray Marchand Oil Co., Inc., Lowell, MA, LEE–0024, Reporting Requirements

Ray Marchand Oil Co., Inc. (Marchand), filed an Application for Exception from the requirement to prepare and file DOE Form EIA–782B. The exception request, if granted, would relieve Marchand of that obligation. On May 21, 1991, the Department of Energy issued a Proposed Decision and Order which tentatively concluded that the exception request be denied.

[FR Doc. 14228 Filed 6–13–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3965–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 27, 1991 Through May 31, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D–AFS–J02021–ND Rating EC2. Northern Little Missouri National Grassland Oil and Gas Leasing, Custer National Forest, Dunn, McKenzie, Golden Valley, and Billings Counties, MT.

Summary: EPA recommends the inclusion of a detailed discussion of the site-specific drilling program, offset well production, aquifers, and water resources habitat aquatic life in the final EIS. The draft EIS lacks the baseline data necessary to conduct a thorough analysis of proposed oil and gas leasing. EPA supports the Forest Service approach to protect and use designations for sensitive resources and encourages expanding such designations to include areas where water and air quality may be adversely impacted by oil and gas leasing.

ERP No. D–AFS–J61083–CO Rating EC2. Conundrum Marble Quarry Reopening, Implementation, Maroon Bells-Snowmass Wilderness Area, Section 404 Permit, Pitkin County, CO.

Summary: EPA is concerned about potential project impacts to wetlands, air and water quality. The final EIS should provide information regarding impacts to wetlands to permit a determination of project compliance with the Clean Water Act Section 404(b)(1) guidelines. EPA suggests that the final EIS should also discuss the purpose and need for the project as well as reasonable alternatives.

ERP No. D–AFS–J65176–MT Rating LO, St. Joseph Timber Sale and Road Management, Implementation, Bitterroot National Forest, Stevensville Ranger District, Ravalli and Missoula Counties, MT.

Summary: EPA has no objection to the Bitterroot National Forest's preferred alternative, Alternative C.

ERP No. D–AFS–J67011–CO Rating EC2, Divide Creek Unit Coal-Bed Methane Project, Continued Development, Leasing, Section 404 Permit, White River National Forest, Garfield and Mesa Counties, CO.

Summary: EPA is concerned about the project's potential to impact wetlands and water quality. The final EIS should consider alternative facility siting, design, and construction to minimize potential impacts.

ERP No. D–USN–L11013–00 Rating EO2, US West Coast Homeporting Program for Fast Combat Support Ships (AOE–6 Class), Implementation, Long Beach Naval Station, North Island Naval Air Station and San Diego Naval Station, CA and Puget Sound Naval Shipyard, Bremerton, WA.

Summary: EPA has reviewed this document and is concerned about infiltration, Tributylin contamination, in-water construction of a new mooring buoy and the rebuilding of existing platform "G". EPA has rated the alternative for homeporting at the Naval Shipyard Puget Sound, Bremerton, Washington as Category EC–2, Environmental Concerns—Insufficient Information. EPA has also rated the alternatives for homeporting at the California sites as Category EO–2, Environmental Objections—Insufficient Information.

Final EISs

ERP No. F–AFS–J82012–MT, Lolo National Forest, Noxious Weed Management Plan, Implementation, Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli and Lake Counties, MT.

Summary: EPA has no objections to the Lolo National Forest's preferred alternative, Alternative C.

ERP No. F-AFS-L65140-ID, Horizon Forest Resource Area, Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forests, Fernan Ranger District, Kootenai County, ID.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

Dated: June 11, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-14232 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3965-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed June 03, 1991 Through June 07, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910185, Draft EIS, EPA, New Source Performance Standards and Emission Guidelines for Controlling Air Emissions from Municipal Solid Waste Landfills, Due: July 29, 1991, Contact: Alice A. Chow (919) 541-5626.

EIS No. 910186, Final EIS, IBR, CA, Shasta Lake Outflow Temperature Control, Upper Sacramento River, Keswick Dam to Red Bluff Diversion Dam, Funding, Shasta County, CA, Due: July 15, 1991, Contact: Ms. Colette Diede (916) 978-4956.

EIS No. 910187, Final EIS, AFS, CA, Lake Red Bluff Recreation Development, Implementation, Mendocino National Forest, Sacramento River, Tehama County, CA, Due: July 15, 1991, Contact: Arthur Quintana (916) 824-5196.

EIS No. 910188, Draft EIS, AFS, OR, Bergan Fire Salvage Timber Sale and other Fire Recovery Projects, Silver Creek Wild and Scenic River Designation, Implementation, Snow Mountain Ranger District, Ochoco National Forest, Harney County, OR, Due: July 29, 1991, Contact: Jim Keniston (503) 573-7292.

EIS No. 910189, Final Supplement, COE, WA, Washington Aquatic Plan Management Program Geographic and Treatment Related Program, Implementation, New and Updated Information, Lewis and Pend Oreille Counties, WA, Due: July 15, 1991, Contact: Dr. David Rice (206) 764-3625.

EIS No. 910190, Final EIS, BLM, WA, MT, ND, OR, ID, WY, SD, NV, UT, AZ, CO, NM, OK, Thirteen Western States, Vegetation Treatment on Bureau of Land Management Lands, Implementation, AZ, CO, ID, MT, NV, NM, ND, OK, OR, SD, UT, WA, and WY, Due: July 15, 1991, Contact: Jim Melton (307) 261-5101.

EIS No. 910191, Draft EIS, AFS, MT, Spring Creek Timber Sales and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Musselshell Ranger District, Little Belt Mountains, Meagher and Harlowton, MT, Due: July 29, 1991, Contact: David Wanderaas (406) 632-4391.

EIS No. 910192, Draft EIS, USA, MD, VA, MA, Cameron Station Comprehensive Base Closure and Realignment of Fort Belvoir, Fort Myer and Fort McNair, Implementation, Fairfax and Arlington Counties, VA and Washington, DC, Due: July 29, 1991, Contact: Keith Harris (301) 962-4999.

EIS No. 910193, Second Final EIS, (AFS, WY, Threemile Area Timber Sale and Road Construction, Implementation, Medicine Bow National Forest Land and Resource Management Plan, Medicine Bow National Forest, Carbon County, WY, Due: July 15, 1991, Contact: Joy Trowbridge (307) 745-8971.

Dated: June 11, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-14231 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3965-1]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as the amended by Superfund Amendments and Reauthorization Act (CERCLA), notice is hereby given that a proposed administrative cost recovery settlement concerning the Roe Lane Tank site in Kansas City, Kansas was issued by the Agency on May 22, 1991. The settlement resolves an EPA claim under section 107 of CERCLA against the City of Kansas City, Kansas. The settlement requires the settling party to pay $36,454.41 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center and the Regional Hearing Clerk's Office, both at 726 Minnesota Avenue, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before 30 days from the date of publication of this Notice.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-4038. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Hearing Clerk, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913)-551-7630. Comments should reference the Roe Lane Tank site, Kansas City, Kansas and EPA Docket No. VII-91-F-0014 and should be forwarded to Venessa Cobbs at the above-referenced address.

FOR FURTHER INFORMATION CONTACT: Joseph E. Sheehy, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7643.

Dated: May 23, 1991.

David A. Wagoner,

Director, Waste Management Division.

[FR Doc. 91-14204 Filed 6-13-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 7, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Kathy Conley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0468.

Title: Policies and Rules Concerning Operator Service Providers (CC Docket No. 90-313)—Phase II.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting and other: Reports are to be filed 6, 9, 15 and 21 months after 12/21/90.

Estimated Annual Burden: 1,200 responses, 10 hours average burden per respondent, 12,000 hours total annual burden.

Needs and Uses: Operator service providers are required to file reports to the FCC on rates, complaints and cost information. The information will be used by the Commission for monitoring purposes and to prepare reports to Congress as required by the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14178 Filed 6-13-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC of Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements of comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009857-004.

Title: Florida-Caribbean Cruise Association.

Parties:

Carnival Curise Line
Chandris, Inc.
Commodore Cruise Line
Costa Crusie Lines, N.V.
Cunard/NAC
Dolphin Cruise Line
Kloster Cruise limited
Premier Cruise Line
Princess Cruises
Royal Caribbean Cruises, Ltd.

Synopsis: The proposed amendement would expand the geographic scope to include all North American ports and ports in Central America and South America. It would also make other nonsubstantive changes.

Agreement No.: 203-011038-010.

Title: Southeastern Caribbean Discussion Agreement.

Parties:

United States Altantic and Gulf/Southeastern Caribbean Conference
"Independent Carrier Parties"
Seaboard Marine, Ltd.
Tecmarine Line, Inc.
Bernuth Lines
North American Caribbean Line Ltd.
Blue Caribe Line.

Synopsis: The proposed amendment would add West Indies Shipping Corporation as an Independent Carrier Party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 232-011335.

Title: TMM/ACS Space Charter and Sailing Agreement.

Parties:

Transportation Maritima Mexicana S.A. de C.V.
Star Shipping A/S.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels, coordinate sailings, utilize common terminals, jointly negotiate terminal and stevedoring arrangements and interchange equipment in the trade between U.S. Atlantic and Gulf ports and U.S. points via such ports and Northern European ports and points via such ports. The aprties have requested a shortened review period.

Dated: June 10, 1991.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary

[FR Doc. 14122 Filed 6-13-91; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

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

Agreement No.: 224-004070-004.

Title: San Francisco Port Commission/Stevedoring Services of America Terminal Agreement.

Parties:

San Francisco Port Commission
Stevedoring Services of America (SSA).

Synopsis: The Agreement, filed June 3, 1991, amends the basic agreement to: (1) Increase the service area at Pier 94 & 96; (2) provide rent credits for certain improvements; and (3) clarify that the Agreement cannot be extended beyond October 31, 1992.

Dated: June 10, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-14123 Filed 6-13-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 123]

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1992 for training grants in occupational safety and health. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where to obtain additional information.)

Authority

This program is authorized under section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are in 42 CFR part 86, "Grants

for Education Programs in Occupational Safety and Health."

Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for a training grant.

Availability of Funds and Recipient Activities

Funds in the total amount of $11,072,000 will be available in Fiscal Year 1992.

Approximately $10,225,000 of the total funds available will be utilized as follows:

1. To award approximately 5 non-competing continuation and 9 competing Educational Resource Center (ERC) training grants totaling approximately $8,200,000 and ranging from approximately $400,000 to $800,000 with the average award being approximately $600,000 (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 17, 1986).

2. To award approximately 24 non-competing continuation and 6 competing long-term training project grants totaling $2,000,000 and ranging from approximately $10,000 to $500,000, with the average award being $50,000, to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety (for specific activities refer to **Federal Register** Announcement, 52 FR 3172, February 2, 1987); and

3. To conduct the peer review and evaluations of all new, competing continuation, and supplemental applications received.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Non-competing continuation awards within the approved project periods will be made on the basis of satisfactory progress and the availability of funds.

In addition, approximately $600,000 of the total funds available will be awarded to ERCs to support the development and presentation of continuing education and short courses for professionals engaged in the management of hazardous substances. These funds were provided to NIOSH through an Interagency Agreement with the National Institute for Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 Stat. 1708–1710). The hazardous substance training funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERC's in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 for the ERC continuing education program (for specific activities refer to the **Federal Register** Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty and staff salaries, and other costs to provide occupational safety and health training to practicing professionals in State and local health and environmental agencies and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Approximately $247,000 of the total funds available will be awarded to ERCs to support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty and staff salaries, trainee costs, and other costs to educate professionals in agricultural safety and health.

Purpose

The objective of this grant program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional and para-professional occupational safety and health personnel to carry out the purposes of the Act.

Review and Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination, and special industrial or community training needs that may be peculiar to the region.

2. Plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

3. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve Characteristics of an Educational Resource Center (**Federal Register** Announcement, 51 FR 32963, September 17, 1986).

4. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educationa' process.

5. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to Center goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of a plan describing the research and research training the Center proposes. This shall include

goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

In reviewing long-term training project grant applications, consideration will be given to:

1. The need for training in the program area outlined by the application. This should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and similar programs, if any within the geographic area.

2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. The competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

Funding Allocation Criteria

For Educational Resource Center grants, the following criteria will be considered in determining funding allocations.

1. Academic core programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral) and specialty (master's) programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional manpower needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

2. Center administration

Budget to support Center administration to assure coordination and promotion of academic programs.

3. Continuing education/outreach program

Budget to support outreach and continuing education activities to prepare, distribute, and conduct short courses, seminars, and workshops.

4. Research training programs

Budget to support research training programs to establish a research base within the core disciplines and for the training of researchers in occupational safety and health.

5. Hazardous substance training programs

Budget to support the development and presentation of continuing education courses for professionals engaged in the management of hazardous substances.

6. Agricultural safety and health academic programs

Budget to support the development and presentation of specialized academic programs and continuing education courses in agricultural safety and health.

For Long-Term Training Project grants, the following factors will be considered in determining funding allocations.

1. Academic core programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral), specialty (master's), and baccalaureate/associate programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional manpower needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

Catalog of Federal Domestic Assistance Number (CFDA)

This program is described in the Catalog of Federal Domestic Assistance Program No. 93.263, Occupational Safety and Health Training Grants.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Application Submission and Deadline

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation and Supplemental Receipt Date: July 1, 1991.

An original and two copies of new, competing continuation and supplemental applications (Form CDC 2.145A ERC or TPG) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, room 300, Atlanta, GA 30305.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on/or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or b. above are considered late

applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Comneting Continuation Receipt Date: November 15, 1991 An original and two copies of non-competing continuation applications (Form CDC 2.145B ERC or TPG) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE, room 300, Atlanta, GA 30305.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 123. You will receive a complete program description, information on application procedures, and an application package containing address and phone numbers for the contact personnel. Lisa Tamaroff will provide the business management technical assistance.

Programmatic technical assistance may be obtained from John T. Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: June 10, 1991.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 91–14175 Filed 6–13–91; 8:45 am]

BILLING CODE 4160–19–M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of the package, call the FSA, Report Clearance Officer 202–401–5604.)

Quarterly Report of Expenditures and Estimates—OCSE–131—0970–0014—This information and data is needed to compute quarterly grant awards to estimate incentive payments to States, for required recordkeeping, prepare appropriation requests and to prepare an annual report to Congress. *Respondents:* State and local governments; *Number of Respondents:* 54; *Frequency of Response:* Quarterly; *Estimated Average Burden per Response:* 3.5; *Estimated Annual Burden:* 1,134 hours. *OMB Desk Officer:* Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: June 10, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems

[FR Doc. 91–14140 Filed 6–13–91; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 91C–0189]

Sola/Barnes-Hind; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sola/Barnes-Hind, has filed a petition proposing that the color additive regulations be amended to provide for the safe use of 1,4-bis(2-methacryloxyethylamino)-9,10-anthraquinone to color contact lenses prepared with glyceryl methacrylate/methyl methacrylate/ethylene glycol dimethacrylate copolymer and N,N-dimethyl acrylamide/methyl methacrylate/ethylene glycol dimethacrylate copolymer.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food and Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetc Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 0C0226), has been filed by Sola/Barnes-Hind, 810 Kifer Rd., Sunnyvale, CA 94086–5200, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of 1,4-bis(2-methacryloxyethylamino)-9,10-anthraquinone to color contact lenses prepared with glyceryl methacrylate/methyl methacrylate/ethylene glycol dimethacrylate copolymer and N,N-dimethyl acrylamide/methyl methacrylate/ethylene glycol dimethacrylate copolymer

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 7, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–14238 Filed 6–13–91; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Oncologic Drugs Advisory Committee

Date, time, and place. July 1 and 2, 1991, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, July 1, 1991, 9 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open committee discussion, July 2, 1991, 8:30 a.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates

data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 21, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 1, 1991, the committee will discuss: (1) New drug application (NDA) NDA 20–119, VeeM–26 (tenoposide, Bristol-Myers Squibb), for multiple indications for childhood acute lymphocytic leukemia; (2) supplemental NDA 19–880, Paraplatin (carboplatin, Bristol-Myers Squibb), for first line combination chemotherapy stages III and IV ovarian cancer; and (3) NDA 20–141, Isovorin (1-leucovorin, Lederle Labs), for rescue after high dose methotrexate for osteosarcoma, patients with impaired methotrexate elimination, and inadvertent methotrexate overdose. On July 2, 1991, the committee will discuss: (1) NDA 20–122, Oncopent (pentostatin, Parke-Davis), for alpha interferon refractory hairy cell leukemia; and (2) the NSABP tamoxifen breast cancer prevention protocol.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. July 24 and 25, 1991, 9 a.m., Holiday Inn Crowne Plaza, Regency Rm., 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 24, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, July 25, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; John L. Gueriguian, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3490, fax 301–443–9282.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 28, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 24, 1991, the committee will discuss the osteoporosis indication of injectable salmon calcitonin (Calcimar, Rhone-Poulence Rorer) in light of recently acquired efficacy data. On July 25, 1991, the committee will discuss safety and efficacy for NDA 20–086, acarbose (Glucobay), submitted by Miles, Inc.

Gastrointestinal Drugs Advisory Committee

Date, time, and place. July 25 and 26, 1991, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 25, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, July 26, 1991, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or the Advisors and Consultants Staff, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, inforamtion, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 10, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requried to make their comments.

Open committee discussion. On July 25, 1991, the committee will discuss NDA 17–939, Tagamet (cimetidine), continuous intravenous injection for prevention of stress ulcer and a draft guidelines for the study of Crohn's disease. On July 26, 1991, the committee will discuss the use of bismuth subsalicylate (Pepto-Bismol) as a Category I over-the-counter (OTC) antidiarrheal.

The committee discussion and conclusions regarding the use of bismuth subsalicylate may be considered by the agency in its preparation of a final monograph for OTC antidiarrheal drug products. This monograph is being developed as part of the OTC drug review. The advance notice of proposed rulemaking for OTC antidiarrheal drug products was published in the **Federal Register** of April 30, 1986 (51 FR 16138). Bismuth subsalicylate has not been proposed as an active ingredient for inclusion in this monograph.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the commitee's work.

Public hearings are subject to FDA's guidelines (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either

orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-14371 Filed 6-12-91; 2:18 p.m.]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Infant Mortality Advisory Council; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Secretary, Department of Health and Human Services announces the establishment of the following advisory committee.

Designation: Advisory Committee on Infant Mortality

Purpose: Advises the Secretary on Department programs related to infant mortality, including implementation of the Healthy Start Initiative and other recommendations of the Domestic Policy Council, and infant mortality objectives from Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.

Structure: The Committee consists of the Assistant Secretary for Health, the Assistant Secretary for Children and Families, the Administrator, Health Care Financing Administration and the Assistant Secretary for Food and Consumer Services, USDA, as ex-officio members, and 21 members, including the chair, selected by the Secretary. Members shall be representatives of both the public and private sectors. Members from the private sector will represent corporations and foundations, the media, the clergy, health and other professional organizations. Members from the public sector will include elected officials, and health and human services administrators from State and local levels including representatives of minority, rural and urban interests.

Authority for this Committee will terminate in two years unless the Secretary, HHS, formally determines that continuance is in the public interest.

Dated: June 11, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-14239 Filed 6-13-91; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on May 17, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Compliance With Pass-Along—0960-0240—The authority granted by the final rule F-20-416.2099 allows the Social Security Administration (SSA) to request cost-of-living adjustment pass-along information from those States which administer their own supplementary payments programs. Without this authority, SSA would be unable to determine that those States have complied with the requirement to meet certain supplementary expenditures. Compliance failure could result in a state losing Federal financial participation in the title XIX, Medicaid program. The affected public consists of States which administer their own supplementary payments program.

Number of Respondents: 26
Frequency of Response: 15(4) [2]/11(1) [1]
Average Burden Per Response: 1 hour
Estimated Annual Burden: 71 hours

2. Employment Relationship Questionnaire—0960-0040—The information collected on the form SSA-7160 is used by the Social Security Administration to determine the status of certain employees in various occupational fields. The affected public is comprised of employers of individuals applying for Social Security benefits whose employee status is in doubt.

Number of Respondents: 47,500
Frequency of Response: 1
Average Burden Per Response: 25 minutes
Estimated Annual Burden: 19,792 hours

3. Statement Regarding Contributions—0960-0020—The information collected on the form SSA-783 is used by the Social Security Administration to make determination of one-half support which is an eligibility factor for certain claimants. The affected public is comprised of claimants who need to prove one-half support by the wage earner or other persons having knowledge of the situation.

Number of Respondents: 30,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 7,500 hours

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 10, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-14183 Filed 6-13-91; 8:45 am]

BILLING CODE 4190-11-M

[1] 15 States report four times annually
[2] 11 States report once annually

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-30]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 14, 1991.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Bob Swieconek, Army Corps of Engineers, Civilian Facilities, rm. 5138, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave. NW., rm. 4133, Washington, DC 20314-1000; (202) 272-0520; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (202) 325-0474. (These are not toll-free numbers).

Dated: June 7, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU-43
Millers Ferry Lock and Dam
Route 1, Box 102
Camden Co: Wilcox, AL 36726-
Landholding Agency: COE
Property Number 319011549
Status: Unutilized
Comment: 1000 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-22
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011551
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-21
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011552
Status: Unutilized
Comment: 12080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-23
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011553
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale, AL 36776-
Landholding Agency: COE
Property Number 319011554
Status: Unutilized

Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–15
Coffeeville Lock and Dam
Star Route Box 77
Blandon Springs Co: Choctaw, AL 36919–
Landholding Agency: COE
Property Number 319011556
Status: Unutilized
Comment: 1547 sq. ft.; 1 story frame residence; most recent use—lock tender's dwelling.

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles, CA 91706–

Landholding Agency: COE
Property Number 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Colorado

John Martin Reservoir
Project Office
Star Route
Hasty Co: Bent, CO 81044–
Landholding Agency: COE
Property Number 319010014
Status: Underutilized
Comment: 1350 sq. ft.; one floor brick; most recent use—residence-office.

Florida

Bldg. CN7
Ortona Lock reservation, Okeechobee Waterway
Ortona Co: Glades, FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8
Ortona Lock reservation, Okeechobee Waterway
Ortona Co: Glades, FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN–19
Moore Haven Lock
Okeechobee Waterway
Moore Haven Co: Glades, FL 3471–
Location: 1 mile east of highway 27
Landholding Agency: COE
Property Number 319011688
Status: Unutilized
Comment: 1281 sq. ft.; 1 story frame residence; secured area with alternate access.

Georgia

Lot 5
Lake Forrest Subdivision
Woodframe House
Hartwell Co: Hartwell, GA
Landholding Agency: COE
Property Number 319110026
Status: Excess
Comment: 896 sq. ft.; 2-story wood frame residence; off-site removal only.

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner Co: Bonner, ID 83856–
Location: 3½ miles west of Priest River.
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2989 sq. ft.; 3 story log construction with wood frame; offsite removal only; needs rehab.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Indiana

Dwelling #2
Cagles Mill Lake
Poland Co: Putnam, IN 47868–
Location: 5 miles west of Polano on SR 42
Landholding Agency: COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Kentucky

Green River Locks & Dam #3
Rochester Co: Butler, KY 42273–
Location: SR 70 west from Morgantown, KY, approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; Potential utilities; needs major rehab.

Kentucky River Locks & Dam #1
Carrolton Co: Carroll, KY 41008—
Location: I–71 to Carrolton exit, east on SR227 to Highway 320, left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319010041
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame; subject to periodic flooding; needs rehab.

Kentucky River Lock and Dam #3
Pleasureville Co: Henry, KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficienccies.

Kentucky River Lock and Dam 3
Pleasureville, Co: Henry, KY 40057–
Location: SR 421 north from Frankfort, KY to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010061
Status: Unutilized
Comment: 1060 sq. ft.; 2 story wood frame; needs rehab.

Michigan

Former C. G. Lightkeeper Sta.

Little Rapids Channel Project
St. Marys River
Sault Ste Marie Co: Chippewa, MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

Minnesota

Orwell Dam Reservior
RFD #4, Box 100
Fergus Falls Co: Ottertail, MN 56537–
Location: Off highway 210, 12 miles from Fergus Falls.
Landholding Agency: COE
Property Number: 319011039
Status: Unutilized
Comment: 1040 sq. ft.; frame house; possible asbestos; potential utilities.

Former Yardmaster's Dwelling Duluth Vessel Yard
900 Minnesota Avenue
Duluth Co: St. Louis, MN 55802–
Landholding Agency: COE
Property Number: 319011042
Status: Unutilized
Comment: 1568 sq. ft.; 2 story wood frame residence; potential utilities; minor rehab.

Montana

Entry Building
Fort Peck Project
Fort Peck Co: Valley, MT 59223–
Location: Highway 24 about 1.6 mile from project headquarters.
Landholding Agency: COE
Property Number: 319011539
Status: Excess
Comment: 225 sq. ft.; 1 story wood frame; needs rehab; off-site removal.

New Jersey

Qtrs. 0301
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110001
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0302
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110002
Status: Unutilized
Base closure
Comment: 1200 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0303
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110003
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0304
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110004
Status: Unutilized
Base closure
Comment: 1200 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0305
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110005
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0306
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110006
Status: Unutilized
Base closure
Comment: 1036 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0307
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110007
Status: Unutilized
Base closure
Comment: 1200 sq. ft.; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0308
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110008
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0309
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110009
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0310
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110010
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0311
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110011
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0312
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110012
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0313
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110013
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0314
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110014
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0315
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110015
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0316
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110016
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0317
Clementon Family Housing
Erial-Williamstown Road

Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110017
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0318
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110018
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0319
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110019
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0320
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110020
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0322
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110021
Status: Unutilized
Base closure
Comment: 1200 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0324
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110022
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0326
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110023
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

Qtrs. 0328
Clementon Family Housing
Erial-Williamstown Road
Sicklerville Co: Camden, NJ 08081–
Landholding Agency: COE
Property Number: 319110024
Status: Unutilized
Base closure
Comment: 1036 sq. ft; one story single family residence; structural deficiencies; needs rehab; possible asbestos.

New Mexico

Bldg. 3W
Conchas Lake Project
(See County) Co: San Miguel, NM 88416–
Landholding Agency: COE
Property Number: 319011507
Status: Underutilized
Comment: 1000 sq. ft.; 1 story adobe residence; intermittently occupied.

Bldg. 2E
Conchas Lake Project Office
(See County) Co: San Miguel, NM 88416–
Landholding Agency: COE
Property Number: 319011538
Status: Underutilized
Comment: 1000 sq. ft.; 1 story adobe residence.

Pennsylvania

Conemaugh River Lake
Road #1, Box 702
Saltsburg Co: Indiana, PA 15681–
Landholding Agency: COE
Property Number: 319010019
Status: Unutilized
Comment: 2642 sq. ft.; one unit of brick/frame duplex; most recent use—residence.

Curwensville Lake
Curwensville Co: Clearfield, PA 16833–
Location: Curwensville Lake Administration Area off Route 453.
Landholding Agency: COE
Property Number: 319030001
Status: Excess
Comment: 1500 sq. ft.; 1 story wood frame; most recent use—residential; off-site use only.

Foster Joseph Sayres Dam
Damtenders Residence
Beach Creek Co: Centre, PA 16822–
Location: Administrative Area of dam off Route 150
Landholding Agency: COE
Property Number: 319030002
Status: Excess
Comment: 1262 sq. ft.; 1 story brick/concrete frame; most recent use—residential; off-site use only.

South Carolina

Bldg. 1
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Manager's Office.
Landholding Agency: COE
Property Number: 319011544
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 2
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Manager's Office.
Landholding Agency: COE
Property Number: 319011545
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 3
J.S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011546
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 4
J.S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011547
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 5
J.S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick, SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Texas

Bldg. 6–B
Brazos River Floodgates
Freeport Co: Brazoria, TX 77541–
Location: 5 miles south of Freeport.
Landholding Agency: COE
Property Number: 319110030
Status: Unutilized
Comment: 1100 sq. ft.; 2 story wood frame; needs major rehab; possible asbestos; off-site use only.

Bldg. 6–C
Colorado River Locks
109 Colorado River Locks
Matagorda Co: Matagorda, TX 77547–
Landholding Agency: COE
Property Number: 319110031
Status: Unutilized
Comment: 1100 sq. ft.; 1 story wood frame; needs rehab; off-site use only.

Virginia

Tract HH 3331–E
John H. Kerr Reservoir
Woodframe House
South Boston Co: Halifax, VA
Landholding Agency: COE
Property Number: 319110027
Status: Excess
Comment: 1040 sq. ft.; 1 story wood frame residence; off-site removal only.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie, WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie, WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 906 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown, WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Kaukauna 1st Locks
301 Canal Street
Kaukauna Co: Outagamie, WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie, WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie, WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown, WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie, WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 18
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark, AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring, AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike, AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

California

Isabella Lake
Box 997
Corps of Engineer Road
Lake Isabella Co: Kern, CA 93240–0997
Landholding Agency: COE
Property Number: 319011014
Status: Unutilized
Comment: 63 acres; steep and brush covered; no utilities.

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino, CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras, CA 95252–0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler, KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Parcel #1
Fall River Lake
Section 26

(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel #2
Fall River Lake
Section 25 and 26
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use—recreation.

Parcel #3
Fall River Lake
Section 26
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment: 22.44 acres; most recent use—recreation.

Parcel #4
Fall River Lake
Section 25
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010068
Status: Excess
Comment: 46.04 acres; most recent use—recreation.

Parcel #5
Fall River Lake
Section 25
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010069
Status: Excess
Comment: 37.31 acres; most recent use—recreation.

Parcel #1
Fall River Lake
Section 3
(See County) Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010070
Status: Excess
Comment: 133.51 acres; most recent use—recreation.

Kentucky

Blackburn Access Site
Smithland Locks and Dam
Morganfield Co: Union, KY 42437–
Location: From Morganfield, KY take SR 56 north to unmarked road, 500 yards south of Shawneetown bridge over the Ohio River. Site is east of bridge.
Landholding Agency: COE
Property Number: 319010020
Status: Unutilized
Comment: 8 acres; subject to periodic flooding; current use—leased for recreational use.

Givens Creek Access Site
Smithland Locks and Dam
Smithland Co: Livingston, KY 42081–
Location: From Marion KY., take SR 60 west for 10 miles to SR 133, north on 133 about 12 miles to site.
Landholding Agency: COE
Property Number: 319010021
Status: Unutilized
Comment: 6 acres; subject to periodic flooding; current use—leased for recreational use.

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 31901002
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg, KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract QQ–4300
Wolf Creek Dam and Lake Cumberland
KY. Hwy 100
Burkesville Co: Cumberland, KY 42717–
Location: 9 miles west of Burkesville.
Landholding Agency: COE
Property Number: 319010037
Status: Excess
Comment: 600 acres; steeply sloped upland and ridgetop; no utilities.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42038–
Location: On the waters of Pilfen Creek. 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046

Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 26.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa.
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon, KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg, KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg, KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Markland Locks & Dam
Part of Big Sugar Recreation Site
Warsaw Co: Gallatin, KY 41095–
Location: South side of US highway 42 approximately 5 miles east of Warsaw, KY.
Landholding Agency: COE
Property Number: 319010063
Status: Unutilized
Comment: .58 acres; subject to periodic flooding; potential utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 31901622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tracts 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42038–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres; wooded; subject to utility easements.

Tracts 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: Old Hensen Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tracts 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tracts 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon, KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo, LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservior
Haughton Co: Caddo, LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010

Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worester, MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Conant Brook Dam
Flood Control Dam
Wales Road
Monson Co: Hampden, MA 01057–
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess
Comment: 5.27 acres.

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester, MA 01540–0500
Location: Portion of Tract A-108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987–2600.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins, MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co; Hubbard, MN 56641–
Location: 1 mile from city of Federal Dam, MN.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Missouri

Parcel A
Wappapello Lake
Section 28
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number: 319010085
Status: Excess
Comment: 53 acres; steep; timbered.

Parcel B
Wappapello Lake
Section 7
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number: 319010086
Status: Excess
Comment: 35 acres; most recent use—wild life management.

Parcel C
Wappapello Lake
Section 14, 22 and 23
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number: 319010087
Status: Excess
Comment: 294 acres; most recent use—wild life management.

Parcel E
Wappapello Lake
Section 23
Wayne Co: Wayne, MO
Location: NW 1/4, NE 1/4, Section 23 and Survey 813, T29N, 5th PM.
Landholding Agency: COE
Property Number: 319010094
Status: Excess
Comment: 46 acres; most recent use—Wild life management.

Parcel D
Wappapello Lake
Section 3
Wayne Co: Wayne, MO
Landholding Agency: COE
Property Number 319010095
Status: Excess
Comment: 38 acres; most recent use—wild life management.

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number : 319011019
Status: Underutilized
Comment: 100 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number : 319011020
Status: Underutilized
Comment: 30 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number : 319011021
Status: Underutilized
Comment: 23 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun, MS 38901–0903
Landholding Agency: COE
Property Number : 319011022
Status: Underutilized
Comment: 490 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 T23N, R5E
Grenada Co: Calhoun, MS 38901–0903
Landholding Agency: COE
Property Number : 319011023
Status: Underutilized
Comment: 60 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4 T23N, R5E
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number : 319011024
Status: Underutilized
Comment: 120 acres; no utilities, most recent used—wildlife and forestry management: (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number : 319011025
Status: Underutilized
Comment: 60 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number : 319011026
Status: Underutilized
Comment: 20 acres; no utilities, most recent used—wildlife and forestry management: (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha, MS 38903–0903
Landholding Agency: COE
Property Number : 319011027
Status: Underutilized
Comment: 80 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun, MS 38901–0903
Landholding Agency: COE
Property Number : 319011028
Status: Underutilized
Comment: 30 acres; no utilities, most recent used—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha, MS 38390–10903
Landholding Agency: COE
Property Number: 319011029

Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha, MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha, MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada, MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada, MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada, MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

New York

Kinzua Dam and Allegheny Res.
Box 983, State Line Run
West Bank Co: Cattaraugus, NY
Landholding Agency: COE
Property Number: 319011566
Status: Underutilized
Comment: 237 acres; a portion in a floodway; most recent use—recreation/hunting.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monro, OH 43931-0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Parcel No. 100
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall, OK
Location: 1 mile northeast of Enos
Landholding Agency: COE
Property Number: 319010440
Status: Unutilized
Comment: 11.77 acres; most recent use—recreation.

Parcel No. 1
Hugo Lake
Section 24
(See County) Co: Choctaw, OK
Landholding Agency: COE
Property Number: 319010839
Status: Unutilized
Comment: 33.56 acres; potential utilities; most recent use—military training exercises.

Parcel No. 2
Hugo Lake
Section 6
(See County) Co: Choctaw, OK
Landholding Agency: COE
Property Number: 319010840
Status: Unutilized
Comment: 15 acres; potential utilities; undeveloped.

Parcel No. 3
Hugo Lake
Section 14
(See County) Co: Choctaw, OK
Landholding Agency: COE
Property Number: 319010841
Status: Unutilized
Comment: 5.50 acres; potential utilities; portion subject to flowage easement.

Parcel No. 7
Kaw Lake
Section 27
(See County) Co: Kay, OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Parcel No. 3
Sardis Lake
Section 21
(See County) Co: Latimer, OK
Landholding Agency: COE
Property Number: 319010843
Status: Excess
Comment: 2.5 acres; potential utilities; most recent use—wildlife management.

Parcel No. 4
Sardis Lake
Section 21
(See County) Co: Latimer, OK
Landholding Agency: COE
Property Number: 319010844
Status: Excess
Comment: 4.5 acres; potential utilities; most recent use—wildlife management.

Parcel No. 7
Fort Gibson Lake
Section 6
(See County) Co: Cherokee, OK 74434
Landholding Agency: COE
Property Number: 319010869
Status: Unutilized
Comment: 16.31 acres; potential utilities; most recent use—recreational and development.

Parcel No. 14
Fort Gibson Lake
Section 20
(See County) Co: Cherokee, OK 74434
Landholding Agency: COE
Property Number: 319010870
Status: Unutilized
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.

Parcel No. 15
Fort Gibson Lake
Section 22
(See County) Co: Cherokee, OK 74434
Landholding Agency: COE
Property Number: 319010871
Status: Unutilized
Comment: 7.51 acres; potential utilities; most recent use—recreational.

Parcel No. 28
Fort Gibson Lake
Section 35
(See County) Co: Mayes, OK 74434
Landholding Agency: COE
Property Number: 319010877
Status: Unutilized
Comment: 36.59 acres; potential utilities; and intensive; most recent use—recreational.

Parcel No. 75
Fort Gibson Lake
Section 16
(See County) Co: Mayes, OK 74434
Landholding Agency: COE
Property Number: 319010887
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.

Parcel No. 88
Fort Gibson Lake
Section 7
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319010899
Status: Unutilized
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel No. 89
Fort Gibson Lake
Section 7
(See County) Co: Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.

Parcel 95
Fort Gibson Lake

Section 33
(See County) Co; Wagoner, OK 74434
Landholding Agency: COE
Property Number: 31901806
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—recreational.

Pine Creek Lake
Section 27
(See County) Co; McCurtain, OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 43
Fort Gibson Lake
Section 11
(See County) Co; Mayes, OK 74434
Landholding Agency: COE
Property Number: 319011371
Status: Underutilized
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 49
Fort Gibson Lake
Section 15
(See County) Co; Mayes, OK 74434
Landholding Agency: COE
Property Number: 319011377
Status: Excess
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 61
Fort Gibson Lake
Section 13
(See County) Co; Mayes, OK 74434
Landholding Agency: COE
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.

Parcel No. 99
Fort Gibson Lake
Section 21
(See County) Co; Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.

Parcel No. 102
Fort Gibson Lake
Section 33
(See County) Co; Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.

Parcel No. 105
Fort Gibson Lake
Section 14, 22 and 23
(See County) Co; Wagoner, OK 74434
Landholding Agency: COE
Property Number: 319011406
Status: Underutilized
Comment: 375 acres; portion is environmentally protected; most recent use—recreation.

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow, OR 77836—
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: COE
Property Number: 319011687
Status: Unutilized
Comment: 2.25 acres; unimproved land; secured area with alternate access.

Pennsylvania

Tract B–202 (Portion of)
Stillwater Reservoir
Forest City Co: Susquehanna, PA 18421—
Location: On the Lackawanna River, 4 miles north of Forest City.
Landholding Agency: COE
Property Number: 319010009
Status: Unutilized
Comment: 70 acres; property divided by a creek; access to majority of the land is difficult.

Mahoning Creek Lake
New Bethlehem Co: Armstrong, PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer, PA 16150—
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.43 acres; subject to flowage easement; existing property encroachments.

Loyalhanne Lake
RD 2
Saltsburg Co: Westmoreland, PA
Location: Fronts on state route 185.
Landholding Agency: COE
Property Number: 319011002
Status: Underutilized
Comment: 15 acres; radio communication antenna located on portion of land; most recent use—park and recreation.

Tracts L24, L26, and L27
Crooked Creek Lake
(See County) Co: Armstrong, PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 9.84 acres; potential for utilities.

East Branch Clarion River Lake
Wilcox Co: Elk, PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 3 ½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson, TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson, TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: East of Lamar Road
Landholding Agency: COE

Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford, TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart, TN 37050—
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery, TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham, TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tract 11523, 11524
Barkley Lake
Ashland City Co: Cheatham, TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart, TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham, TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery, TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart, TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Texas

Part of Tract A–10
(See County) Co: Tarrant, TX
Location: Off FM 2499 at north end of dam embankment
Landholding Agency: COE
Property Number: 31901390
Status: Excess
Comment: 0.29 acres; most recent use—parking lot.

Part of Tract 340
Joe Pool Lake
(See County) Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use—recreation.

Parcel #222
Lake Texoma
(See County) Co: Grayson, TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Tract J–957
Whitney Lake
Bosque Co: Bosque, TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: .18 acres; potential utilities; encroachments on large portion of property.

Tract J–936
Whitney Lake
Bosque Co: Bosque, TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.

Summary of Suitable / Available Properties

Total number of Properties = 222

SUITABLE / UNAVAILABLE PROPERTIES

Buildings (by State)

California

Lake Sonoma
3333 Skaggs Springs Road
Geyserville Co: Sonoma, CA 95441–9644
Landholding Agency: COE
Property Number: 319011016
Status: Unutilized
Comment: 2438 sq. ft.; 1 story wood frame; needs rehab; rural area.

Indiana

Cecil M. Harden Lake Project
Rockville Co: Parke, IN 47872–9726
Location: SR36 west from Indianapolis for approximately 50 miles to SR59, then south on 59 for approximately 5 miles, left on unnumbered road for about 2 miles to site.
Landholding Agency: COE
Property Number: 319011043
Status: Unutilized
Comment: 1219 sq. ft.; brick frame residence.

Cagles Mill Lake
Cagles Mill Lake Dam
Poland Co: Putnam, IN 47868–
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.
Landholding Agency: COE
Property Number: 319011046
Status: Unutilized
Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Kentucky

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll, KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll, KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Washington

Naval Station Puget Sound

7500 Sand Point Way, NE
Seattle Co: King, WA 98115–
Landholding Agency: Navy
Property Number: 779120002
Status: Excess
Base closure
Comment: 144 sq. ft. ammunition bunker, most recent use-storage, secured area with alternate access.

Land (by State)

Georgia

E.O. Tract A
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract B
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 88 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract D
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: Northwest of Forest Lake Estates on Dozier Branch.
Landholding Agency: COE
Property Number: 319011518
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract E
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: Approximately 1½ miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use—forest and wildlife management.

E.O. Tract F
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: Approximately 2 miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract G
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract H
J. Strom Thurmond Dam and Reservior (See County) Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011522
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract I
J. Strom Thurmond Dam and Reservior (See County) Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

Kansas

Paradise Point
Public Use Area (Perry Lake)
Perry Co: Jefferson, KS 66073–
Location: Upper-east reaches of the Perry Lake project, approximately 8½ miles west of Oskaloosa, 8½ miles southeast of Valley Falls.
Landholding Agency: COE
Property Number: 319011540
Status: Underutilized
Comment: 479 acres; portion in floodway/reservoir flood control area; remote location.

Grasshopper Point
Public Use Area (Perry Lake)
Perry Co: Jefferson, KS 66073–
Location: Along the west shore of Perry Lake, 5 miles eash (gravel road) from Meridan, 5 miles south from Ozawkie.
Landholding Agency: COE
Property Number: 319011541
Status: Underutilized
Comment: 174 acres; portion in floodway/reservoir flood control area; remote location.

Sunset Ridge
Public Use Area (Perry Lake)
Perry Co: Jefferson, KS 66073–
Location: Upper-west reaches of the Perry Lake project, approximately 8 miles south from Valiy Falls.
Landholding Agency: COE
Property Number: 319011542
Status: Underutilized
Comment: 279 acres; portion in floodway/reservoir flood control area; remote location.

Dragoon Access Area
Pomona Lake
Vassar Co: Osage, KS 66543–
Location: Upper reaches of north shore of the Pomona Lake, approximately 10.5 miles north and east of Lundon.
Landholding Agency: COE
Property Number: 319011543
Status: Underutilized
Comment: 110 acres; portion in floodway/reservoir flood control area.

South Carolina

E.O. Tract J
J. Strom Thurmond Dam and Reservoir
(See County) Co: McCormick, SC
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized
Comment: 57 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract C
J. Strom Thurmond Dam and Reservoir
(See County) Co: McCormick, SC
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized
Comment: 70 acres; potential utilities; most recent use—forest and wildlife reserve.

West Virginia

Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahela, WV 26505–
Landholding Agency: COE
Property Number: 319011532
Status: Unutilized
Comment: 13.94 acres; potential utilities.

Summary of Suitable/Unavailable Properties

Total number of Properties = 21.

UNSUITABLE PROPERTIES

Buildings (By State)

Illinois

Smithland Locks & Dam Project
Old Lock and Dam Number 51
Golconda Co: Pope, IL 62938–
Landholding Agency: COE
Property Number: 319110025
Status: Unutilized
Reason: Other
Comment: Steel water tank

Kentucky

Tract 111—Building
Martins Fork Lake
Smith Co: Harlan, KY 40867–
Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Other
Comment: Floodway

Latrine
Kentucky River Lock and Dam Number 3
Highway 561
Pleasureville Co: Henry, KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine

New Mexico

Cochiti Lake Project Office
Pena Blanca Co: Pena Blanca, NM 87041–
Location: 30 miles from Santa Fe, 45 miles from Albequerque.
Landholding Agency: COE
Property Number: 319011505
Status: Underutilized
Reason: Other
Comment: Secured Area

New York

Bldg. 8

Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120013
Status: Excess
Base closure
Reason: Other
Comment: Electrical Substation GSA Number: 2–N–NY–797

Bldg. 7
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120014
Status: Excess
Base closure
Reason: Other
Comment: Electrical Substation GSA Number: 2–N–NY–797

Bldg. R450
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120038
Status: Excess
Base closure
Reason: Other
Comment: Electrical Substation GSA Number: 2–N–NY–797

Hospital Area Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120045
Status: Excess
Base closure
Reason: Other
Comment: Structurally unsound.
GSA Number: 2–N–NY–797

North Street Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120046
Status: Excess
Base closure
Reason: Other
Comment: Structurally unsound.
GSA Number: 2–N–NY–797

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage Co: Smith, TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway

Track 2618 (Portion)
Cordell Hull Lake and Dam Project.
Roaring River Recreation Area
Gainesboro Co: Jackson, TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway

Texas

Bldg. 18
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110033
Status: Unutilized
Reason: Secured Area

Bldg. 19
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110034
Status: Unutilized
Reason: Secured Area

Bldg. 20
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110035
Status: Unutilized
Reason: Secured Area

Bldg. 21
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110036
Status: Unutilized
Reason: Secured Area

Bldg. 22
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110037
Status: Unutilized
Reason: Secured Area

Land (By State)

Colorado

Beaver Creek Well Site
Approx. 1½ miles east of Brush
Brush Co: Morgan, CO 80723–
Landholding Agency: GSA
Property Number: 549120064
Status: Excess
Reason: Floodway
GSA Number: 7–B–CO–604

Kentucky

Track 4626
Barkley Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg, KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway

Track AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski, KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway

Track AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski, KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon, KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell, KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing, MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: Highway right of way

Missouri

Stockton Public Use Area
Stockton Lake
Stockton Co: Cedar, MO 65785–0632
Location: Adjacent to and east of Stockton, MO.
Landholding Agency: COE
Property Number: 319011471
Status: Underutilized
Reason: Floodway

Smith's Fork Park
Smithville Lake
Smitville Co: Clay, MO 64089–
Location: Within Smithville Lake water resource project downstream from dam, adjoins Smithville.
Landholding Agency: COE
Property Number: 319011473
Status: Underutilized
Reason: Floodway

Old Mill Area
Stockton Lake
Stockton Co: Cedar, MO 65785–0632
Location: Below Stockton Lake Dam on right bank of Outlet Channel/SAC River. Approximately 2 miles from Stockton.
Landholding Agency: COE
Property Number: 319011477
Status: Underutilized
Reason: Floodway

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada, MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized

Reason: Within airport runway clear zone

North Carolina

Land
Atlantic Intercoastal Waterway
(See County) Co: Corrituck, NC
Location: Near old Coinjack Bridge.
Landholding Agency: COE
Property Number: 319011537
Status: Unutilized
Reasons: Floodway

Ohio

Ohio River
New Cumberland Lock and Dam
Glasgow Co: Beaver, OH
Landholding Agency: COE
Property Number: 319011560
Status: Unutilzied
Reason: Floodway

Ohio River
Pike Island Lock and Dam
RD #1, Box 33
Tiltonsville Co: Jefferson, OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway

Pike Island Locks and Dam
Ohio River
RD 1, Box 33
Steubenville Co: Jefferson, OH 43952–
Landholding Agency: COE
Property Number: 319030012
Status: Underutilized
Reason: Floodway

Pennsylvania

Conemaugh River Lake
RD #1, Box 702
Blairsville Co: Indiana, PA 15681–
Location: West side of Route 217
Landholding Agency: COE
Property Number: 319011557
Status: Underutilized
Reason: Floodway

Loyalhanna Lake
RD #2
Latrobe Co: Westmoreland, PA
Landholding Agency: COE
Property Number: 319011559
Status: Unutilized
Reason: Floodway

Loyalhanna Lake
RD #2
Saltsbury Co: Westmoreland, PA
Landholding Agency: COE
Property Number: 319011562
Status: Underutilized
Reason: Floodway

Loyalhanna Lake
RD #2
Saltsbury Co: Westmoreland, PA
Landholding Agency: COE
Property Number: 319011563
Status: Unutilized
Reason: Floodway

Lock and Dam #7
Monongahela River
Greensboro Co: Greene, PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway

Portion of Tract 406C
Cowanesque Lake Project
Nelson Cemetary
Nelson Co: Tioga, PA 16946–
Landholding Agency: COE
Property Number: 319011620
Status: Excess
Reason: Other Comment: Cemetery

East Branch Clarion River Lake
Wilcox Co: Elk, PA
Location: Outflow Access Area—below dam
Landholding Agency: COE
Property Number: 319030013
Status: Underutilized
Reason: Floodway

Tennessee

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart, TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Bainesboro Co: Jackson, TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay, TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay, TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN, 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith, TN, 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway

Tract 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway

Tract 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone. Floodway

Tract 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith, TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson, TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway

Tract 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson, TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway

Tract 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith, TN 37030–

Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson, TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway

Tract 811
West Fork Launching Area
Smyrna Co: Rutherford, TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford, TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford, TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson, TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith, TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson, TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson, TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson, TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith, TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
(See County) Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3
Joe Pool Lake
(See County) Co: Dallas, TX
Landholding Agency: COE
Property Number: 3190110398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson, TX 76530–9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson, TX 76530–9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway

Tract 1237
Lake Waco
(See County) Co: McLennan, TX
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Reason: Floodway

Parcel 2, Portion of Tract A67
Belton Lake
Belton Co: Bell, TX 76513–
Location: Adjacent to lot 7, block 1 of Woodland Point Subdivision.
Landholding Agency: COE
Property Number: 319011691
Status: Excess
Reason: Other
Comment: No access.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke, WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia, WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha, WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

Summary of Unsuitable Properties

Total number of Properties = 73

[FR Doc. 91–1402 Filed 6–13–91; 8:45 am]
BILLING CODE 4201–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–4212–13: GP1–240]

Advisory Council Tour and Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Burns Advisory Council Meeting and Tour.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976, that a tour and meeting of the Burns District Advisory Council will be held on July 11 and 12, at the Burns District Office located on Highway 20, three miles south of Hines, Oregon. The tour will begin at 8 a.m. on Thursday, July 11; the meeting will begin at 9 a.m. on Friday, July, 12.

The tour will include stops at various locations in the District that relate to the general topic of interrelationships between management of public and private lands in the Harney County area.

The agenda for the meeting will include: Updates on the Three Rivers Resource Management Plan, a status

report on the District's Fiscal Year 91 planned work, a briefing on drought conditions and a discussion of the interrelationships between management of public and private lands with emphasis on the findings of the previous day's field tour.

DATES: The tour will begin at 8 a.m. and adjourn by approximately 6 p.m. Pacific Standard Time on Thursday, July 11 and the meeting will begin at 9 a.m and conclude by 4 p.m. on July 12.

FOR FURTHER INFORMATION CONTACT: Michael T. Green, District Manager, Bureau of Land Management, HC 74–12533 Highway 20 West, Hines, OR 97738, (Telephone 503 573–5241).

SUPPLEMENTARY INFORMATION: The tour will be open to the general public. However, interested persons will need to provide their own transportation and meals. Road conditions will require vehicles with high clearance. Individuals wishing to attend should contact the District Manager at the above address.

The meeting will also be open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management at the listed address by July 8, 1991.

Dated: June 3, 1991.

Michael T. Green,

District Manager.

[FR Doc. 91–14157 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–33–M

[NV–030–91–4830–10–24–1 A]

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Carson City District Advisory Council.

DATES: July 18, 1991.

ADDRESSES: 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

SUMMARY: The Council will meet at 9 a.m. The agenda will include the following:

1. Minutes from the last meeting.
2. Current Item Update.
   a. Truckee Meadows Project
   b. Military—Nevada Report
   c. Marietta Wild Burro Range Dedication
   d. Wild Horse and Burro Program
3. Overview of the Carson City/BLM Partnership and Virginia City Comstock Historic District.
4. At 10:00 a.m., comments from the public will be heard.
5. Tour of projects (planned and completed) involved in the Carson City/BLM Partnership. Transportation will be provided for Advisory Council members. Non-members must provide their own transportation.
6. Tour of the Virginia City Comstock Historic District.

FOR FURTHER INFORMATION CONTACT: Chuck Pope, BLM Public Affairs Officer, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706–0638. (Phone: (702) 885–6000).

Dated: June 7, 1991.

James W. Elliott,

District Manager Carson City District.

[FR Doc. 91–14158 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–HC–M

Medford District Advisory Council; Meeting Notice

Notice is hereby given in accordance with Public law 99–463 that a field trip of the Bureau of Land Management's Medford District Advisory Council will be held July 11, 1991.

The field trip will depart at 8 a.m. from the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. Purpose of the field trip is to enable the Advisory Council to become more familiar with the District's Resource Management Plan efforts, in order to assist in preparing a preferred alternative.

Persons interested in joining the Council on its field trip may do so, but must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Kurt Austermann, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone 503–770–2424.

Summary minutes of any action taken by the Council will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: June 5, 1991.

David A. Jones,

District Manager.

[FR Doc. 91–14159 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–33–M

[WO–150–00–4830–11]

National Public Lands Advisory Council—Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet Friday, July 19, 1991, at the The Red Lion Hotel, 255 South West Temple, Salt Lake City, Utah 84101, Phone #801–328–2000. Meeting hours will be 8 a.m. to 5 p.m. on Friday, July 19th.

The propcsed agenda for the meeting is: Opening remarks by National Public Lands Advisory Council Chairman Dr. James E. Bowns; Dean Stepanek, Deputy Director, BLM; and BLM Utah State Director, Jim Parker.

The Council presently has four (4) ongoing task force groups. These groups advise and counsel the BLM regarding the agency's programs on: Hazardous materials management; recreation; mining; and, the proposal for the BLM to have a "foundation" similar to the Fish & Wildlife Service and Forest Service's foundations. The Council will summarize the status of each of the task force groups.

The BLM will provide briefings to the Council on its wilderness recommendations and wilderness water rights. There will also be a briefing on the future direction of BLM's hazardous materials program. On Thursday, July 18, 1991, the Council will take a field trip outside the Salt Lake City area touring various hazardous waste management sites.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council beginning at 2 p.m. on Friday, July 19th. Speakers should address specific national public lands issues and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by July 12th to the BLM's Salt Lake City office at the address listed below. Depending on the number of people who wish to address the Council it may be necessary to limit the length of oral presentations.

DATES: Friday, July 19, 1991—The National Public Lands Advisory Council Meeting.

ADDRESSES: Copies of Public Statements should be mailed by July 12 to: Mr. Jerry Meredith, Bureau of Land Management, P. O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, DC Office, BLM, telephone (202) 208–5101.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, BLM,

regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Date Signed: June 16, 1991.

Cy Jamison,

Director.

[FR Doc. 91–14184 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–84–M

[G-040-G1-0403-4212-14; OK NM 82788]

Tulsa District Office; Proposed Direct Sale

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Realty Action.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the appraised fair market value:

Indian Meridian, Oklahoma

T. 14 N., R. 1 E.,

Sec. 28, lots 20, 21, and 22.

Containing a total of 2.37 acres in Oklahoma County.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcels has been determined to be $300.00 ($100.00 per lot).

Publication of this notice will segregate the above-described land from all appropriation, under the public land laws including the mining laws, but not from sale under the above-cited statute, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The subject lands are part of the remaining public land holdings in Oklahoma scattered throughout the state. The lands are being offered for sale since the Bureau of Land Management (BLM) can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. The sale is consistent with the Bureau planning for the lands involved and has been discussed with governmental units and local officials. Direct sale procedures are appropriate because of the parcels' small size and the best use is to merge them with an adjoining ownership of an existing business. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Planning Analysis and Decision Document for Central Oklahoma Land Disposal and the public interest would be served by offering these lands for sale.

The parcels are being offered to the Town of Luther, Oklahoma, using the direct sale procedures authorized under title 43 CFR 2711.3–3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The grantees will be required to submit a deposit of either cash, certified check, cashier's check, bank draft, money order, or any combination thereof for not less than 30 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document, is available for review at this BLM office.

3. Title will be issued by a patent subject to all prior valid existing rights and reservations of record.

4. Title will be issued by a patent with restrictions under Executive Order 11988 (42 CFR 26951 May 25, 1977), for the protection and management of, floodplain on the above-described lands.

DATES: On or before July 29, 1991, interested parties may submit comments to the District Manager, BLM, Tulsa District Office, 9522H E. 47th Place, Tulsa, Oklahoma 74145. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, (405) 794-9624.

Dated: June 7, 1991.

Joe Incardino,

Acting District Manager.

[FR Doc. 91–14160 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Availability of Plan of Operations and Environmental Assessment; Murphy Oil USA, Inc., Big Thicket National Preserve, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Murphy Oil USA, Inc., a Plan of Operations for continuing operation of four existing gas wells: Rafferty No. 1, Rafferty No. 1N, Rafferty No. 7, and M.J. Cunningham No. 5, located within the Jack Gore Baygall/Neches Bottom Unit of Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment, for a period of 30 days from the publication date of this notice, in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fe, New Mexico. Copies are available fromthe Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: June 10, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91–14216 Filed 6–13–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation: Inland Container Corporation I, 4030 Vincennes Road, Indianapolis, Indiana 46268–0937.

2. Directly or indirectly wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

A. Anderson Box Company, Inc.—Indiana
B. El Morro Corrugated Box Corporation—Delaware
C. El Morro Corrugated Box Corporation—Puerto Rico
D. Inland Paper Company, Inc.—Indiana
E. Inland Real Estate Investments, Inc.—Indiana

F. Inland-Rome Inc.—Delaware
G. Inland-Orange Inc.—Delaware
H. Sabine River & Northern Railroad Company—Texas
I. Inland Container Corporation—Delaware
J. Crockett Container Corporation—California
K. King Container Company—California
L. Pakway Container Corporation—Indiana

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14201 Filed 6-13-91; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 34)]

Intrastate Rail Rate Authority—Washington

AGENCY: Interstate Commerce Commission.

ACTION: The Commission assumes jurisdiction over intrastate rail rates, classifications, rules, and practices.

SUMMARY: By letters filed May 14 and 22, 1991, the State of Washington, through its Utilities and Transportation Commission, notified this Commission that it would not seek recertification to regulate rail rates, classifications, rules, and practices pursuant to 49 U.S.C. 11501(b), and asked the Commission to assume jurisdiction over these intrastate matters. The Commission grants the request and assumes jurisdiction over rail rates, classifications, rules, and practices in the State of Washington.

EFFECTIVE DATE: Effective June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: June 7, 1991.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14199 Filed 6-13-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31886]

Georgia Great Southern Division of the South Carolina Central Railroad Company, Inc., Central of Georgia Railway Company, and Georgia Northern Railway Company—Joint Relocation Project and Trackage Rights Exemptions

On May 29, 1991, Georgia Great Southern Division of the South Carolina Central Railroad Company, Inc. (GGS), and Central of Georgia Railway Company and Georgia Northern Railway Company, affiliates of Norfolk Southern Railway Company (jointly referred to as NS), filed a notice of exemption under 49 CFR 1180.2(d) (5) and (7). The notice involves two transactions: (1) A joint project for the relocation of a GGS line of railroad, consisting of (a) GGS's acquisition of overhead (bridge) trackage rights on a 3,585-foot NS line (between valuation stations 1814+59 and 1850+44) at Albany, GA, (b) GGS's abandonment of (i) a 3,585-foot section of line paralleling the NS line between valuation stations 1814+59 and 1850.44, and (ii) a nearby 520-foot section of line, (c) GGS's construction of a new connector track between the GGS and NS lines in the Albany rail yard; and (2) a separate, additional grant of trackage rights that is not part of the joint project, but that will allow GGS to use other NS tracks in the Albany rail yard to interchange traffic and to move between the joint trackage and GGS's mainline at the relocated connection. Together, the joint project and trackage rights will enable GGS to improve its operations in the Albany rail yard, eliminate three rail crossings, and replace double-track street crossings with single-track crossings.

The joint relocation project falls under the class exemption at 49 CFR 1180.2(d)(5). The Commission will assume jurisdiction over the abandonment and construction components of a relocation project only where the proposal involves a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, *Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN*, 4 I.C.C.2d 95 (1987). The separate trackage rights transaction falls under the class exemption at 49 CFR 1180.2(d)(7)

As a condition to the use of this exemption, any employees affected by the separate grant of trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.— Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc.—Lease and *Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on James M. McLaren, Georgia Great Southern Division of the South Carolina Central Railroad, Inc., P.O. Box 62, Dawson, GA 31742-0062, and F. Blair Wimbush, Central of Georgia Railway Company and Georgia Northern Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

Dated: June 10, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14200 Filed 6-13-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-335 (Sub-No. 5X)]

KCT Railway Corporation—Abandonment Exemption—Between Lanar and Wiley, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by KCT Railway Corporation of a 10.36-mile line of railroad between Lamar and Wiley, Colorado, subject to environmental and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 14, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c) (2) must be filed by June 24, 1991, petitions to stay must be filed by July 1, 1991, and petitions for reconsideration must be filed by July 9, 1991. Requests for a public use condition must be filed by June 24, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-335 (Sub-No. 5X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative: Stephen W. McVearry, 1350 New York Avenue, NW, suite 800, Washington, DC 20005-4797.

---

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for the hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: June 7, 1991.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14198 Filed 6–13–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreements

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9622(d)(2), notice is hereby given that a Consent Decree was lodged with the United States District Court for the Eastern District of Tennessee on May 24, 1991. This action was brought pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The parties to this Consent Decree are Southern Foundry Supply, Inc., SMC Corporation, and the City of Chattanooga. These parties agree to design and implement a remedy selected by the Environmental Protection Agency for cleanup of the Amnicola Dump Site in Chattanooga, Tennessee. These parties have also agreed to reimburse the United States for costs it incurs in overseeing the implementation of the remedy, as well as costs it incurs in performing activities relating to remedial design/remedial action and community relations.

The Department of Justice will receive comments relating to the proposed Settlement Agreement for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Southern Foundry Supply, Inc., et al.*, D.J. Ref. 90–11–3–664.

The proposed Settlement Agreements may be examined at the office of hte United States Attorney, 9th and Georiga Avenue, 359 Federal Building, Chattanooga, Tennessee 37402. A copy of the proposed Settlement Agreements may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Settlement Agreements may be obtained in person or by mail from the Environmental Enforcement Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. Any request for a copy of the proposed Settlement Agreements should be accompanied by a check in the account of $92.50 for copying costs ($0.25 per page) payable to "Aspen Systems Corporation."

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91–14130 Filed 6–13–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Automotive Emissions Cooperative Research Venture

Notice is hereby given that, on May 17, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Automotive Emissions Cooperative Research Venture (known as the Auto/Oil Air Quality Improvement Research Program) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Auto/Oil Air Quality Improvement Research Program. The written notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become associate members of the Auto/Oil Air Quality Improvement Research Program: Ethyl Corporation, of 330 South Fourth Street, P.O. Box 2189, Richmond, Virginia 23217 and Elf France, Tour Elf, 36 Etage, DRDI, Cedex 45–92078 Paris LaDefense, France.

No other changes have been made in either the membership or planned activities of the Auto/Oil Air Quality Improvement Research Program.

On October 19, 1989, the Auto/Oil Air Quality Improvement Research Program filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on November 29, 1989, 54 FR 49122. A notice of additional members to the Auto/Oil Air Quality Improvement Research Program was published on August 8, 1990, 55 FR 32321.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–14128 Filed 6–13–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./PCN America, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and PCN America, Inc. ("PCN America") on March 25, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under sspecified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties are the following:

Cable Television Laboratories, Inc., 1050 Walnut Street, suite 500, Boulder, Colorado 80302.

PCN America, Inc., 153 East 53rd Street, suite 2500, New York, NY 10022.

The area of planned activity is cooperation in the development of interface concepts between personal communications networks and cable system networks, including the exchange of information relating to the functions and architecture of personal communications networks, and cooperation in the conduct of radio frequency tests in connection with

experimental personal communications network licenses issued by the FCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-14129 Filed 6-13-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Proposed Revised 1991 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 1991 aggregate production quotas.

SUMMARY: This notice proposes revised 1991 aggregate production quotas for controlled substances in Schedule II of the Controlled Substances Act. Since the establishment of the 1991 aggregate production quotas on January 31, 1991 (56 FR 3842), DEA has reviewed data submitted by the registered manufacturers concerning 1990 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

DATES: Comments or objections should be received on or before 30 days from date of publication.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations. On January 31, 1991, a notice of the 1991 established aggregate production quotas was published in the **Federal Register** (56 FR 3842). The notice stipulated that the Administrator of the DEA would adjust the quotas in early 1991 as provided for in title 21, Code of Federal Regulations, 1303.13(c). These aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1991 and do not include amounts which may be imported for use in industrial processes.

Based on a review of 1990 year-end inventories, 1990 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administraiton, and the other information available to DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1991 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base.

Schedule II	Previously established 1991 aggregate production quota	Proposed revised 1991 aggregate production quota
Alfentanil	5,300	7,300
Amobarbital	395,000	159,000
Amphetamine	98,000	188,000
Cocaine	663,000	657,000
Codeine (for sale)	56,907,000	52,600,000
Codeine (for conversion)	6,055,000	7,313,000
Desoxyephedrine	1,289,000	1,184,000
Levodesoxyephedrine	1,284,000	1,184,000
Methamphetamine	5,000	0
Dextropropoxyphene	85,267,000	93,675,000
Dihydrocodeine	241,000	494,000
Diphenoxylate	707,000	728,000
Hydrocodone	3,671,000	4,582,000
Hydromorphone	223,000	234,000
Levorphanol	10,300	6,700
Meperidine	10,452,000	8,930,000
Methadone	1,875,000	2,672,000
Methadone Intermediate (4-cyano-2-dimethylamino-4,4-diphenylbutane)	1,979,000	2,655,000
Methylphenidate	5,060	0
Mixed Alkaloids of Opium	4,008,000	7,672,000
Morphine (for sale)	67,226,000	64,367,000
Morphine (for conversion)	2,654,000	3,102,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	6,300	7,300
Oxycodone (for sale)	2,500	2,900
Oxycodone (for conversion)	13,432,000	16,424,000
Oxymorphone	782,000	659,000
Pentobarbital		
Secobarbital		

In determining the proposed revised 1991 aggregate production quota for morphine (for sale), the major portion of this increase is due to export requirements. This increased need was not anticipated when establishing the previously finalized aggregate production quota for morphine (for sale).

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be

heard and setting the time for the hearing.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedule I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: May 6, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91-14137 Filed 6-13-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-2]

Robert Krebsbach, M.D., Denial of Applications

On December 1, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Robert Krebsbach, M.D. (Respondent), P.O. Box 2717, 5507 E. 32nd Place, Tulsa, Oklahoma 74135, an Order to Show Cause proposing to deny his applications for DEA Certificates of Registration, executed on January 27, 1989, for registration in the State of Kansas and on October 10, 1989, for registration in the State of Oklahoma, as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Krebsbach's proposed registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, acting *pro se*, submitted a written request for a hearing on the issues raised by the Order to Show Case, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Subsequently, Government counsel filed a motion for summary disposition on November 9, 1990, based on Respondent's lack of state authority to handle controlled substances in the State of Oklahoma as well as the suspension of his medical license in that state. On November 26, 1990, counsel for Respondent filed a response to the Government's motion, acknowledging Respondent's lack of authorization to handle controlled substances and to practice medicine in the State of Oklahoma. Judge Bittner considered the motion for summary disposition, and on December 3, 1990, issued her opinion and recommended ruling in this matter. No hearing was held, since no factual issues were involved. Neither side filed exceptions to the recommended ruling of the administrative law judge. On January 9, 1991, Judge Bittner transmitted the record to the Administrator.

Thereafter, on February 15, 1991, counsel for the Government filed a second motion for summary disposition based on Respondent's lack of authorization to practice medicine or handle controlled substances in the State of Kansas. In support of that motion, counsel for the Government filed a copy of a letter from the Executive Director of the State of Kansas Board of Healing Arts, advising that Respondent's license was in "cancelled status" effective August 1, 1990. On February 9, 1991, the administrative law judge requested that the Administrator withhold issuance of a final order regarding the Oklahoma application, pending completion of the proceedings before her on the Kansas application, and also issued an order providing Respondent until March 12, 1991, to file a response to the Government's second motion for summary disposition. No such response has been submitted. On March 29, 1991, the administrative law judge issued a supplemental opinion and recommended decision. No exceptions were filed and the matter was transmitted to the Administrator on May 6, 1991.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based on the following findings of fact and conclusions of law.

The administrative law judge found that, by order dated November 1, 1990, the Oklahoma State Board of Medical Licensure and Supervision suspended Respondent's license to practice medicine. Therefore, Respondent is without authority to practice medicine or handle controlled substances in Oklahoma. Further, since August 1, 1990, Respondent has not been authorized to practice medicine or handle controlled substances in the State of Kansas.

State authorization to handle controlled substances is a prerequisite to registration of a practitioner under the Federal Controlled Substances Act. 21 U.S.C. 823(f). DEA has consistently held that when an applicant is without authority to handle controlled substances under the laws of the State in which he practices, or proposes to practice, DEA is without authority to issue a Federal registration. See, Emerson Emory, M.D., Docket No. 85-46, 51 FR 9543 (1986); Michael Alva Marshall, M.D., Docket No. 85-16, 51 FR 8046 (1986); Dennis Howard Harris, M.D., Docket No. 84-19, 49 FR 39930 (1984).

In such cases, a motion for summary disposition is properly entertained and must be granted. It is settled law that when no fact question is involved, or when the facts are agreed, a plenary adversary administrative proceeding is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, the rationale is that Congress does not intend administrative agencies to perform a meaningless task. *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

The administrative law judge concluded that there is no lawful basis for DEA to grant a registration to Respondent since he has no state license to dispense controlled substances or to practice medicine. Therefore, the administrative law judge recommended that the applications for registration executed by Respondent should be denied.

The Administrator has examined the entire record and adopts the recommended findings and conclusions of the administrative law judge. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the applications for registration as a practitioner submitted by Robert Leo Krebsbach, M.D., be, and they hereby are, denied. This order is effective June 14, 1991.

Dated: June 6, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-14138 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions hake been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade adjustment Assistance, at the address show below, not later than June 24, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 24, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Dated received	Date of petition	Petition No.	Articles produced
Alcan Rolled Prod. Co. (wkrs)	Terre Haute, IN	06/03/91	05/28/91	25,889	Aluminum.
American Olean Tile Co (wkrs)	Lansdale, PA	06/03/91	05/23/91	25,890	Glazed ceramic wall tile.
Aries Handbag Inc, & Bagmaster (LGPH)	New York, NY	06/03/91	05/27/91	25,891	Handbags.
C.J. Langenfelder (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,892	Unloading, screening and hauling iron.
Dowell Schlumberger (Wkrs)	Houston, TX	06/03/91	05/23/91	25,893	Stimulation of oil and gas wells.
Eastern Gear Corp (Co)	Paterson, NJ	06/03/91	05/22/91	25,894	Precision gears, shafts, and parts.
Evenflo Juvenile Furniture Co (Co)	Stevens Point, WI	06/03/91	05/09/91	25,895	Infant furniture.
GenCorp Automotive (Wkrs)	Cuba, MO	06/03/91	05/21/91	25,896	Extruded rubber window sealing systems.
Golden Capital Dist., Inc. (IUE)	E Hanover, NJ	06/03/91	05/23/91	25,897	Wholesale distributor.
Heckett (division of Hasco Corp) (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,898	Process slag, scrap metal and ingots.
Keibler-Thompson (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,899	Digging slag pits.
Kent Taylor Inc, ASEA Brown Boveri(Wkrs)	Rochester, NY	06/03/91	05/08/91	25,900	Printed circuit boards.
Louis A. Grant, Inc. (OEIU)	Pittsburgh, PA	06/03/91	05/03/91	25,901	Digging out slag pits.
Mendecino Dress (ILGW)	Long Island City, NY	06/03/91	05/23/91	25,902	Ladies' dresses.
Pori International (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,903	Waste water and waste oil.
Sara Lee Knitting, Pannill (Wkrs)	Floyd, VA	06/03/91	05/23/91	25,904	Sweat pants and shirts.
Simpson Timber/McCleary Door Plant (Wkrs)	McCleary, WA	06/03/91	05/22/91	25,905	Style and rail doors.
SonicStar International Ltd. (Wkrs)	Jamestown, NY	06/03/91	05/22/91	25,906	Ultrasonic cleaning systems.
Sterling Drug, Inc (Wkrs)	Trenton, NJ	06/03/91	05/08/91	25,907	Aspirin.
Tom Henry Chevrolet (Wkrs)	Bakerstown, PA	06/03/91	05/24/91	25,908	Chevrolet GEO Dealership.
Warner Waste Management (OEIU)	Morrisville, PA	06/03/91	05/03/91	25,909	Slag.

[FR Doc. 91-14193 Filed 6-13-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,421]

Fisher-Price, Inc.; Brownsville, TX; Negative Determination Regarding Application for Reconsideration

By an application dated May 16, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 23, 1991 and published in the **Federal Register** on May 10, 1991 (56 FR 21690).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers provide services related to the production of toys manufactured by a foreign facility of its parent company. The reconsideration, however, was requested for workers in the Cutting Department whose production was transferred to Mexico. Workers in the Cutting Department cut material parts for soft toys being manufactured in Mexico which were subsequently imported as finished products.

The materials cut by the Cutting Department are components to soft toys which are produced in Mexico and later imported. The issue of components (cut material parts) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (DC circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of soft toys cannot be considered in determining import injury to workers producing cut material parts for soft toys. Therefore, in determining import injury to the Brownsville

workers, the Department must consider imports of cut material parts.

The Department's denial for workers providing services related to the production of toys was addressed in the Department's initial denial notice. That notice stated that the Brownsville workers were laid off because of a corporate reorganization. The reorganization terminated Brownsville's previous administrative and support functions for the Matamoros plant to the warehousing of supplies and the receiving of finished articles from its Matamoros plant. This would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-14196 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

The Lee Company, Kansas City, MS; The Lee Company, Kansas City, KS; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at The Lee Company, Kansas City, Missouri and Kansas City, Kansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,555; The Lee Company, Kansas City, Missouri (June 5, 1991)

TA-W-25,555 A-B; The Lee Company, Kansas City, Kansas (June 5, 1991)

Signed at Washington, DC this 7th day of June, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-14197 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,554]

Affirmative Determination Regarding Application for Reconsideration; Irvin Automotive/Takata, Incorp. Dandridge, TN

By a letter dated May 24, 1991, the Amalgamated Clothing Workers Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Negative Determination was issued on May 13, 1991 and will soon be published in the Federal Register.

The union claims that the subject firm transferred production in 1990 to its plant in Mexico. Also, the remaining production at Dandridge is scheduled to be transferred to Mexico by July 1991.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 5th day of June 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-14194 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,363, TA-W-25,364]

Gloray Knitting Mills, Inc., Gloray Knitting Mills Retail Outlet, Robesonia, PA, Affirmative Determination Regarding Application for Reconsideration

By a letter dated May 7, 1991, a company official requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of Gloray Knitting Mills, Inc., Robesonia, Pennsylvania and the Gloray Knitting Mills Retail Outlet, Robesonia, Pennsylvania. The Negative Determinations were issued on April 9, 1991 and were published in the Federal Register on May 21, 1991 (56 FR 23302).

The company official claims that the Department's survey was inadequate since its major customer, which recently obtained a worker group certification, was not included in the survey.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 7th day of June 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-14195 Filed 6-13-91; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application Number D-8361]

Proposed Revocation of Prohibited Transaction Exemption (PTE) 81-82 Involving Guaranteed Contract Separate Accounts

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed revocation of existing class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of the proposed revocation of PTE 81-82. PTE 81-82 contains a final exemption for certain transactions involving separate accounts maintained by life insurance companies in connection with contracts under which the life insurance company either: (1) Guarantees repayment of amounts deposited with it by an employee pension benefit plan, together with accrued interest, on a fixed date, or (2) guarantees payment of a fixed annuity.

DATES: Written comments must be received by the Department on or before July 15, 1991.

EFFECTIVE DATE: It is proposed to make the revocation effective 30 days after publication of the final notice revoking PTE 81-82.

ADDRESSES: All written comments (preferably at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: D-8361. The comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200

Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, [202] 523–8971 (this is not a toll-free number) or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, [202] 523–9597 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of the proposed revocation of PTE 81–82.[1] On September 18, 1991, the Department published PTE 81–82 [46 FR 46443], a class exemption from the prohibited transaction restrictions of sections 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code [the Code], by reason of section 4975(c)(1) (A) through (D) of the Code.[2] The exemption provides relief for transactions between a party in interest and a separate account maintained by life insurance companies in connection with contracts under which the life insurance company either: (1) Guarantees repayment of amounts deposited with it by an employee benefit pension plan, together with accrued interest, on a fixed date, or (2) guarantees payment of a fixed annuity. For a more complete discussion of the relief provided by PTE 81–82, interested persons are referred to the exemption itself as published in the **Federal Register** and cited above.[3]

[1] ERISA Procedure 75–1 [40 FR 18471, April 28, 1975] provides that the Department may at any time revoke or limit any exemption. In addition, regulation section 29 CFR 2570.50 [55 FR 32836, August 10, 1990] provides that the Department may take steps to revoke or modify an exemption if, after the exemption takes effect, changes in circumstances, including changes in law or policy, occur which call into question the Department's original conclusions concerning the exemption.

[2] Section 102 of Reorganization Plan No. 4 of 1978 [43 FR 47713, October 17, 1978], generally transferred the Secretary of the Treasury's exemptive authority under section 4975(c)(2) of the Code to the Secretary of Labor.

In the discussion of the proposed revocation, references to specific sections of the Act also should be read to refer to the corresponding provisions of section 4975 of the Code.

[3] The Department notes that, if a final determination is made to revoke PTE 81–82, it also intends to withdraw from consideraton the Proposed Class Exemption for Guaranteed Contract Separate Accounts; Fiduciary Transactions [D–2874, 46 FR 46448] that was published simultaneously with PTE 81–82. The proposed class exemption supplements PTE 81–82 by providing relief from the prohibitions of section 406(6) of ERISA for transactions involving the assets of guaranteed contract separate accounts.

Background

The relief provided by PTE 81–82 was requested in an application filed by Aetna Life Insurance Company, the Equitable Life Assurance Society of the United States and The Prudential Insurance Company of America. The applicants for the exemption, together with two other insurance companies and the American Council of Life Insurance (collectively, the Companies) urged the Department prior to the granting of PTE 81–82 to issue an opinion that assets held in a "guaranteed investment contract separate account" of the kind described in the proposed exemption [4] are not plan assets because such separate accounts differ in many respects from conventional separate accounts. According to the Companies, the guaranteed investment contracts that were described in the application have three essential characteristics: (1) The insurance company guarantees that on the date or dates set forth in the contract, the company will repay to the contract-holder the amount deposited under the contract plus accrued interest; (2) interest is accrued and credited under the contract at a fixed rate set forth in the contract; and (3) the guarantee of repayment of principal and the stated interest are fixed, and do not vary with the investment performance of any assets held by the insurance company.

In the preamble to PTE 81–82, the Department concluded that it would be more appropriate to resolve the question of whether assets held by an insurance company in a guaranteed investment contract separate account are "plan assets" in the context of the Department's then-pending proposed regulation dealing with the definition of that term.[5] Accordingly, the Department declined at that time to issue the opinion requested by the Companies.

On November 13, 1986, the Department published a final regulation, section 29 CFR 2510.3–101, clarifying the definition of "plan assets" for the purpose of title I of ERISA. Regulation section 29 CFR 2510.3–101(h) provides, in part, that when a plan acquires or holds an interest in a separate account of an insurance company, its assets include its investment and an undivided interest in each of the underlying assets of the separate account, unless the separate account is maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account.

[4] See 45 FR 51303, August 1, 1980.

[5] 46 FR at 46445.

In view of the exception set forth in the final "plan assets" regulation for insurance company separate accounts that are maintained solely in connection with certain guaranteed obligations of an insurance company, the Department has made a tentative determination to prospectively revoke PTE 81–82.

In accordance with the Department's exemption procedures, the applicants were given advance notice of the proposed revocation and the reasons therefor, and were provided the opportunity to comment on the revocation. No comments were received from the applicants regarding the proposed revocation.

Written Comments

All persons are invited to submit written comments on the proposed revocation of PTE 81–82 to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the matter. Comments received will be available for public inspection at the address set forth above.

Proposed Revocation of Existing Exemption

On the basis of the material referred to in this document, the Department is considering revoking PTE 81–82, effective 30 days after final notice of the revocation is published in the **Federal Register.**

Signed at Washington, DC, this 7th day of June, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91–14223 Filed 6–13–91; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a

forthcoming meeting of the Working Group on Religious Communities.

DATE AND TIME: Thursday, July 18, 1991, 9 a.m. to 5 p.m.

PLACE: Omni Shoreham Hotel 2500, Calvert Street, NW., Washington, DC.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., Suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: A Working Group of the Commission will hold a meeting to identify the current issues and concerns of religious communities responding to the HIV/AIDS epidemic, and to discuss the interface between the religious communities' response and the federal government's response to the HIV/AIDS epidemic.

Interpreting services are available for deaf people. Please call our TDD number (202) 254–3816 to request services no later than July 11, 1991.

Dated: June 10, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91–14121 Filed 6–13–91; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

National Commission on Acquired Immune Deficiency Syndrome; Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting.

DATE AND TIME: Sunday, June 23, 1991, 2 p.m. to 6 p.m. Monday, June 24, 1991, 8 a.m. to 4 p.m.

PLACE: Airlie House, Airlie, Virginia.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: A Working Group of Commissioners will meet to discuss plans for the Commission's third year of activities.

Dated: June 11, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91–14215 Filed 6–13–91; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 15, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786–0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension.

Title: NEH Performance Reporting Requirements.

Form Number: Not applicable.

Frequency of Collection: Either quarterly, semi-annually, or annually, and within 90 days of the grant ending date.

Respondents: All NEH grantees.

Use: Program evaluation.

Estimated Number of Respondents: 1,250.

Frequency of Response: Twice.

Estimated Hours for Respondents to Provide Information: 2 hours per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 6,250 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91–14208 Filed 6–13–91; 8:45 am]

BILLING CODE 7536–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 2, 1991 from 9:30 a.m.–4 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

For further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 10, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–14126 Filed 6–13–91; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act. (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects/ Challenge III Section) to the National Council on the Arts will be held on July 1, 1991 from 9 a.m.–6:45 p.m. and July 2 from 9 a.m.–4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 2 from 2 p.m.–4 p.m. The topics will be policy and guidelines recommendations.

The remaining portions of this meeting on July 1 from 9 a.m.–6:45 p.m. and July 2 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants.

In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 10, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer Council and Panel Operations National Endowment for the Arts

[FR Doc. 91–14127 Filed 6–13–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Material Research; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Material Research.

Dates/Times/Locations: July 1, 1991 7pm–9pm / July 2, 1991 8am–5pm, University of Maryland, Dept. of Physics & Astronomy, College Park, MD 20742.

July 8, 1991 7pm–9pm / July 9, 1991 8am–5pm, Pennsylvania State University, Department of Physics, University Park, PA 16802.

July 10, 1991 7pm–9pm / July 11, 1991 8am–5pm, Case Western Reserve University, Dept. of Material Science & Engineering, Cleveland, Ohio 44106.

July 15, 1991 7pm–9pm / July 16, 1991 8am–5pm, California Institute of Technology, Dept. of Engineering & Applied Science, Pasadena, CA 91125

July 16, 1991 7pm–9pm / July 17, 1991 8am–5pm, California Institute of Technology, Dept. of Engineering & Applied Science, Pasadena, CA 91125.

July 22, 1991 7pm–9pm / July 23, 1991 8am–5pm, Lehigh University, Dept. of Mechanical Engineering, Bethlehem, PA 18015.

Type of Meeting: Closed.

Agenda: To provide advice and recommendations concerning support for Materials Research Groups.

Contact Person: Dr. John C. Hurt, Program Director, Materials Research Groups, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

Dated: June 10, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–14134 Filed 6–13–91, 8:45 am]

BILLING CODE 7555–01–M

Division of Ocean Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Ocean Science Review Panel.

Date and Time: July 1–2, 1991.

Place: State Plaza Hotel, 2117 E. Street NW., Washington, DC 20037, Ambassador Room.

Type of Meeting: Closed.

Contact Person: Dr. David Epp, Assoc. Program Director, Marine Geology & Geophysics, room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7837.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: June 10, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–14133 Filed 6–13–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. Title of the information collection: 10 CFR 21, "Reporting of Defects and Noncompliance," and 10 CFR 50.55(e), "Reporting of Defects in Design and Construction."

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC licensees and directors or responsible officers of non-licensees that supply components to licensed facilities or activities.

6. An extimate of the number of responses: Part 21—Reduction of 100 reports annually; § 50.55(e)—Reduction of 50 reports annually.

7. An estimate of the total number of hours needed to complete the requirements or request: Part 21—Reduction of 7393 hours per year; § 50.55(e)—Reduction of 1103 hours per year.

8. The average burden per response is: Part 21—95 hours; § 50.55(e)—95 hours.

9. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

10. Abstract: Proposed amendments to 10 CFR part 21 and § 50.55(e) rules will clarify the criteria and procedures for reporting of safety defects by licensees and nonlicensees. The proposed revised criteria and procedures to the existing rules would (1) reduce duplicate evaluation and reporting, (2) establish uniform time limits for evaluation, transfer of information, and reporting, (3) more clearly and uniformly define the defects to be reported, (4) establish a uniform content for reporting; and (5) clarify records retention requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW Lower Level, Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0011 and 3150–0035), NEOB–3019, Office of Management and Budget, Washingotn, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 5th day of June, 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior, Official for Information Resources Management.

[FR Doc. 91–14220 Filed 6–13–91; 8:45 am]

BILLING CODE 7590–01–M

Washington Public Power Supply System Nuclear Project No. 1; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Constructon Permit No. CPPR–134 issued to Washington Public Power Supply System (applicant or WPPSS) for Nuclear Project No. 1 (WNP–1). The facility is located on the applicant's site on the Department of Energy's Hanford Reservation in Benton County, Washington, approximately eight miles north of Richland, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–134 to June 1, 2001. The proposed action is in response to the applicant's request of April 18, 1991 as supplemented on May 22, 1991.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not yet fully completed and the licensee wants to maintain the facility as a potential electrical power resource.

Environmental Impact of the Proposed Action

Since the proposed action involves extending the construction permit, there is no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction. The impact of construction was evaluated in the Final Environmental Statement for WNP–1 and 4 (NUREG–75/012, dated March 1975).

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permit would have no significant environmental impact.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the potential benefit of power production. This option would not eliminate the environmental impacts of construction already incurred. If construction were halted and not completed, site redress activities would restore some small areas to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of the use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for an extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources other than those evaluated in the FES prepared as part of the NRC staff's review of the construction permit application, NUREG–75/012, March 1975.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension of April 18, 1991 as supplemented on May 22, 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, Richland Public Library, 955 Northgate Street, Richland, Washington, 99352.

Dated at Rockville, Maryland, this 6th day of June 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–14221 Filed 6–13–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30-12319-CivP, E.A. 89-223; ASLBP No. 90-618-03-CivP]

Atomic Safety and Licensing Board; Tulsa Gamma Ray, Inc., (Material License No. 35-17178-01)

June 10, 1991.

Memorandum and Order (Prehearing Conference and Evidentiary Hearing)

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. A. Dixon Callihan, Dr. Jerry R. Kline.

1. For purposes of expediting the hearing, the Licensing Board, immediately prior to the evidentiary hearing on June 25, 1991, will conduct a prehearing conference to review the procedures to be followed during the hearing. At such conference, the Board will consider, *inter alia*, such matters as (1) further simplification, clarification and specification of issues (as appropriate), (2) the obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof, (3) determination of the schedule to be followed during the evidentiary hearing, including the order of witnesses, and (4) such other matters as may aid in the orderly disposition of the proceeding. See 10 CFR 2.752.

The prehearing conference will commence at 9:30 a.m. on June 25, 1991, in room 411 (Grand Jury Room), U.S. Courthouse , 333 West 4th Street, Tulsa, Oklahoma 74103. The evidentiary hearing will commence immediately following the prehearing conference, at the same location.

2. Parties are reminded that, if they wish to rely on documentary evidence (exhibits), they bring sufficient copies of each exhibit to present to each of the Board members, representative(s) of the opposing party, and three copies for the court reporter.

It is so ordered.

Bethesda, Maryland, June 10, 1991.

For the Atomic Safety and Licencing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 91-14222 Filed 6-13-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29284]

Administrative Dispute Resolution Act and Negotiated Rulemaking Act; Statement of Compliance

June 10, 1991.

James R. Doty, tne Commission's General Counsel, has released the following statement concerning the Commission's compliance with the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act:

On November 15, 1990, President Bush signed Public Law 101-552, the Administrative Dispute Resolution ("ADR") Act. Companion legislation, Public Law 101-648, the Negotiated Rulemaking ("Reg-Neg") Act, was signed by the President on November 29, 1990. The two Acts authorize the use of arbitration, mediation, and other consensual methods of dispute resolution by federal agencies, while not actually mandating the employment of either ADR [1] or reg-neg.[2] The Acts do mandate, however, an evaluation by all federal agencies of potential areas for ADR leading to the adoption of an appropriate agency policy, and compliance with certain rules if ADR or reg-neg is used by the agency.

The ADR Act requires federal agencies to: (1) Designate an ADR Specialist; (2) review agency activities and adopt policies regarding the potential use of ADR techniques; (3) provide ADR training for employees involved in developing and implementing the ADR policies; and (4) review agency contracts, grants, and other assistance programs to determine whether they should authorize and encourage ADR. The Reg-Neg Act authorizes agencies to use reg-neg procedures if the head of the agency determines that the use of such procedures is in the public interest. Although, unlike the ADR Act, the Reg-Neg Act does not require the adoption of a policy, the Reg-Neg Act contemplates an evaluation by agencies of the utility of such procedures.

On behalf of the Commission, I am authorized to issue a statement regarding the Commission's compliance with these Acts. Although the ADR Act prescribes no deadline for the adoption of an ADR policy and the Reg-Neg Act does not require the adoption of a policy, the Commission considers the adoption of appropriate ADR and reg-neg policies to be a priority item. Therefore, the Commission has moved forward with a program for evaluating its activities and developing appropriate policies.

On March 18, 1991, Chairman Breeden designated the General Counsel as the Commission's "ADR Specialist." In addition, the Commission has authorized me to head the evaluation of reg-neg. Accordingly, I have created an internal ADR & Reg-Neg Task Force with representatives from the various offices within the Commission to examine all aspects of Commission activities in order to determine where ADR or reg-neg procedures may be appropriate. The staff has been receiving assistance from the Administrative Conference of the United States in constructing a program for developing the Commission's ADR policy and in receiving appropriate training. It is contemplated that the Commission will publish a release in the near future soliciting comments regarding the utility of ADR and reg-neg techniques in Commission activities. Until the Commission adopts appropriate policies, it does not intend to consider employing ADR or reg-neg on a case-by-case basis.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14139 Filed 6-13-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Alternative means of dispute resolution are procedures, often involving a neutral third party, that are used in lieu of adjudication to resolve issues in controversy, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, or any combination of these.

[2] Negotiated rulemaking, or "reg-neg," is a procedure by which an agency invites the parties that will be affected by a rule to join the agency in forming an ad hoc committee to develop a consensus draft of the rule.

[File No. 1-9386]

Issuer Delisting; Application To Withdraw From Listing and Registration (NYCOR, Inc., Common Stock, $1.00 Par Value)

June 10, 1991.

NYCOR, Inc. ("Company") has filed an application with the securities and exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company currently has authorized and outstanding four classes of capital stock, the Common Stock; Class A Stock, Par Value $1.00 per share; Class B Stock, Par Value $1.00 per share; and $1.70 Convertible Exchangeable Preferred Stock, Par Value $1.00 per share ("Preferred Stock").

The Common Stock is lis.ed on the Exchange and also trades in the National Association of Securities Dealers Automated Quotations/ National Market System ("NASDAQ/

NMS"). The Class A Stock and the Preferred Stock trade in the NASDAQ-NMS. There is no established public trading market for the Class B Stock, as there are restrictions on its transfer.

The Class A Stock was created and issued effective January 2, 1991. The Company has been advised by the Exchange that the Class A Stock is not eligible for listing because it does not have voting rights. The Class A Stock is currently the Company's largest class of stock and it is presently anticipated by the Company that future issuance of common equity would be in shares of Class A Stock.

Since the Common STock, Class A Stock and Preferred Stock all trade in the NASDAQ/NMS and the Class A Stock may not be admitted to listing on the Exchange, the Company believes that its stockholders will best be served if the Company withdraws the Common Stock from listing on the Exchange in order that all of the Company's publicly-traded shares are traded principally in one market, the NASDAQ/NMS.

Any interested person may, on or before July 1, 1991, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Phlx and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-14202 Filed 6-13-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.963-1; Fuel Tank Access Covers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular 25.963-1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to fuel tank access covers. Guidance information is provided in that AC for showing compliance with the impact and fire resistance requirements of § 25.963(e). This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before October 14, 1991.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 227-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named 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 desire. Commenters should identify AC 25.963-1 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 Transport Standards Staff before issuing the final AC.

Background

Fuel tank access covers have failed in service due to impact with high speed objects such as failed tire tread material and engine debris following engine failures. Failure of an access cover on a wing fuel tank may result in the loss of hazardous quantities of fuel which could subsequently ignite. Section 25.963(e) of the Federal Aviation Regulations (FAR) was, therefore, adopted (Amendment 25-69; 54 FR 40352; September 28, 1989) to require new standards for such covers. Section 121.316 was also adopted concurrently to require each turbine-powered transport category airplane operated in air carrier or commercial operations after October 30, 1991, to meet the new standards of § 25.963(e).

The contents of proposed AC 25.963-1 are considered by the FAA in determining compliance of the fuel tank access covers with § 25.963(e) of the FAR.

Issued in Renton, Washington, on May 31, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 91-14171 Filed 6-13-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the changes in the alternative moving expense and dislocation allowance schedule for persons displaced from dwellings in the States of California, Delaware, Florida, Georgia, Maine, Maryland, Michigan, Nevada, Oklahoma, and Rhode Island as provided for by section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. 4601-4655, implemented at 49 CFR 24.302. The Uniform Act applies to all programs or projects that are undertaken by Federal agencies or with Federal financial assistance and which cause the displacement of any person.

EFFECTIVE DATE: The provisions of this notice are effective July 15, 1991, or on such earlier date as an agency elects to begin operating under this schedule.

FOR FURTHER INFORMATION CONTACT: Barbara J. Satorius, Policy Development Branch, Office of Right-of-Way (202) 366-2043; or Reid Alsop, Office of the Chief Counsel (202) 366-1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Uniform Act established a program to assist persons forced to move as a result of Federal or federally assisted projects. The FHWA is the lead agency for implementing the provisions of the Uniform Act, and, pursuant to the Uniform Act has issued governmentwide implementing regulations at 49 CFR part 24.

The following 17 Federal departments and agencies have, by cross reference adopted the governmentwide regulations. (The governmentwide regulations also apply to other agencies

within DOT that are covered by the Uniform Act.)

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Veterans Affairs
National Aeronautics and Space Administration
Pennsylvania Avenue Development Corporation
Tennessee Valley Authority

Section 202(b) of the Uniform Act provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a single moving expense and dislocation allowance schedule established by the head of the lead agency, as an alternative to being paid for moving and related expenses that are actually incurred. The governmentwide regulations at 49 CFR 24.302 provide that the FHWA will develop, approve, maintain and update this schedule as appropriate.

The purpose of this notice is to update the current schedule which was published as notice on March 2, 1989 (54 FR 8951), by the FHWA for use in payment determinations by all Federal, State, and local governments, and persons affected by the Uniform Act. Persons that move as result of programs or projects undetaken or funded by those departments or agencies listed above are covered by the schedule.

This update increases the schedule amounts in the States of California, Delaware, Florida, Georgia, Maine, Maryland, Michigan Nevada, Oklahoma, and Rhode Island. The schedule is developed from data provided by State highway agencies, and combines the moving expense and the dislocation allowance within the schedule's payment amounts. The following exceptions and limitations contained in the March 2, 1989, notice continue to apply to this schdule:

1. The expense and dislocation allowance to a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.00.

2. An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at the agency's discretion.

3. The expense and dislocation allowance to a person with minimal personal prossessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to $50.00.

4. An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

The schedule continues to be based on the "number of rooms of furniture" owned by a displaced individual or family. In the interest of fairness and accuracy, and to encourage the use of the schedule (and thereby simplify the computation and payment of moving expenses) an agency should increase the room count for purposes of applying the schedule if the amount of possessions in a single room or space actually constitute more than the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if there is the equivalent of two rooms worth of possessions located in the basement. In addition, an agency may elect to pay for items stored outside of the dwelling unit by adding the appropriate number of rooms.

Authority: 42 U.S.C. 4622(b) and 4633(b); 49 CFR 1.48 and 24.302.

Issued on: June 6, 1991.

T.D. Larson,
Administrator.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT, RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE

State	Occupant owns furniture (1) and (2)									Occupant does not own furniture (3)	
	Number of rooms of furniture								Each add. room	First room	Each add. room
	1	2	3	4	5	6	7	8			
Alabama	250	350	450	550	625	700	775	850	75	200	25
Alaska	350	500	650	800	925	1050	1175	1300	100	225	35
American Samoa	250	350	450	550	625	700	775	850	75	200	25
Arizona	250	400	550	650	750	850	950	1050	100	225	35
Arkansas	250	350	450	550	625	700	775	850	75	200	25
California	450	600	750	850	1050	1250	1450	1600	150	300	50
Colorado	250	400	550	650	750	850	950	1050	100	225	35
Connecticut	250	400	550	650	750	850	950	1050	100	225	35
Delaware	250	400	550	650	750	850	950	1050	100	225	35
DC	250	400	550	650	750	850	950	1050	100	225	35
Florida	325	450	575	700	800	900	1000	1100	100	225	35
Georgia	450	650	850	1000	1200	1350	1500	1600	125	250	35
Guam	250	350	450	550	625	700	775	850	75	200	25
Hawaii	250	400	550	650	750	850	950	1050	100	225	35
Idaho	250	350	450	550	625	700	775	850	75	200	25
Illinois	250	400	550	650	750	850	950	1050	100	225	35
Indiana	250	400	550	650	750	850	950	1050	100	225	35
Iowa	250	350	450	550	625	700	775	850	75	200	25
Kansas	250	350	450	550	625	700	775	850	75	200	25
Kentucky	250	400	550	650	750	850	950	1050	100	225	35
Louisiana	250	350	450	550	625	700	775	850	75	200	25
Maine	350	450	550	650	725	800	875	950	75	200	25
Maryland	350	500	650	800	925	1050	1175	1300	100	225	35
Massachusetts	250	400	550	650	750	850	950	1050	100	225	35
Michigan	275	450	600	700	825	925	1050	1150	100	250	35
Minnesota	250	400	550	650	750	850	950	1050	100	225	35
Mississippi	250	350	450	550	625	700	775	850	75	200	25

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT, RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE—Continued

State	Occupant owns furniture (1) and (2)									Occupant does not own furniture (3)	
	Number of rooms of furniture								Each add. room	First room	Each add. room
	1	2	3	4	5	6	7	8			
Missouri	250	350	450	550	625	700	775	850	75	200	25
Montana	250	350	450	550	625	700	775	850	75	200	25
Nebraska	250	350	450	550	625	700	775	850	75	200	25
Nevada	300	450	600	750	900	1050	1200	1350	150	250	50
New Hampshire	250	350	450	550	625	700	775	850	75	200	25
New Jersey	250	400	550	650	750	850	950	1050	100	225	35
New Mexico	250	400	550	650	750	850	950	1050	100	225	35
New York	250	400	550	650	750	850	950	1050	100	225	35
North Carolina	250	350	450	550	625	700	775	850	75	200	25
North Dakota	250	350	450	550	625	700	775	850	75	200	25
No. Mariana Is	350	350	450	550	625	700	775	850	75	200	25
Ohio	250	400	550	650	750	850	950	1050	100	225	35
Oklahoma	250	500	650	800	925	1050	1175	1300	100	250	35
Oregon	250	400	550	650	750	850	950	1050	100	225	35
Pennsylvania	250	400	550	650	750	850	950	1050	100	225	35
Puerto Rico	250	350	450	550	625	700	775	850	75	200	25
Rhode Island	400	500	600	700	800	900	1000	1100	100	300	25
South Carolina	250	350	450	550	625	700	775	850	75	200	25
South Dakota	250	350	450	550	625	700	775	850	75	200	25
Tennessee	250	350	450	550	625	700	775	850	75	200	25
Texas	250	350	450	550	625	700	775	850	75	200	25
Utah	250	350	450	550	625	700	775	850	75	200	25
Vermont	250	350	450	550	625	700	775	850	75	200	25
Virgin Islands	250	350	450	550	625	700	775	850	75	200	25
Virginia	250	400	550	650	750	850	950	1050	100	225	35
Washington	250	400	550	650	750	850	950	1050	100	225	35
West Virginia	250	400	550	650	750	850	950	1050	100	225	35
Wisconsin	250	400	550	650	750	850	950	1050	100	225	35
Wyoming	250	350	450	550	625	700	775	850	75	200	25

Exceptions: See supplementary information.

(1) Person whose residential move is performed by agency, $50.

(2) Move of a mobile home from site, actual cost; reasonable amount may be added for packing and securing personal property for the move at agency discretion.

(3) Occupant of dormitory, $50.

[FR Doc. 91–14148 Filed 6–13–91; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 10, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for reveiw and clearance under the Paperwork Reduction Act of 1980 Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0892.

Form Number: 8300.

Type of Review: Revision.

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or related transactions must report it to the IRS and provide a statement to the payor. Any transaction which must be reported under title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

Respondents: Farms, Businesses or other-profit, Federal agencies or employees, Small businesses or organizations.

Estimated Number of Respondents: 8,300.

Estimated Burden Hours Per Response/Recordkeeping: 19 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 9,483 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 91–14181 Filed 6–13–91; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Congress-Bundestag Youth Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces a competition for exchange organizations to administer the Congress-Bundestag Youth Exchange Program (CBYX). Organizations that are successful in this competition will be awarded grants in FY 1993 to administer the exchange for

academic year 1993–94 and will also be eligible for grants in FY 1994, 1995 and 1996. Approximately 9 grants will be awarded for all components of the program. Final determination of grant amounts is subject to the availability of funding and will be based on final budget submissions to be negotiated following preliminary selection decisions.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. EDT on August 16, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked prior to August 16, 1991 but received at a later date. It is the responsibility of each grant applicant to ensure that their proposal is received by the above deadline. Selection decisions will be made by December 31, and will be coordinated with the Government of Germany, which is simultaneously selecting the German counterpart organizations that will administer the program in Germany. Final budgets, based on guidance to be provided by the Agency, will be required from the selected organizations by July 31, 1992. Duration: The duration of the initial grants will be from November 1, 1992 to July 31, 1994. No grant funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application should be submitted to the following office: U.S. Information Agency, Office of the Executive Director, Bureau of Educational and Cultural Affairs (E/X), Room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Mr. Robert Persiko, Youth Programs Division (E/VY), room 357, 301 4th Street SW., Washington, DC 20547; telephone 202–619–6299 for detailed application guidance.

SUPPLEMENTARY INFORMATION: The Congress-Bundestag Youth Exchange Program (CBYX), known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), is an official exchange program of the governments of the United States and the Federal Republic of Germany. It provides a full scholarship for an academic year experience of living and studying in the host country. Part of the exchange involves students aged 16–18 preparing for university, vocational or professional careers, who live with host families, attend high school ("Gymnasium" in Germany), and participate in community life. Another component is dedicated to young professionals aged 18–22 who study at community colleges or universities and receive training. Additional components involve young farmers and vocational school graduates (described in more detail below). Each government provides funding through grant awards for the costs of recruiting, selecting, orienting, and debriefing of its nationals and their international airfare; and most hosting costs (specified below) for the duration of the foreign nationals' stay. Participants themselves pay domestic travel to the port of departure and provide their own funds for their daily needs. Grant proposals may include a provision for partially or fully covering this cost for financially needy participants. The USIA health and accident insurance plan is used exclusively for all German participants, and its cost is covered by USIA; the German Government provides insurance for Americans while in Germany. American organizations that deem it necessary to carry liability insurance on the German participants are responsible for providing for this coverage at their own expense.

The actual number of participants selected each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. A final determination of exchange numbers for each academic year is made in the preceding December when representatives of both governments hold annual bilateral discussions. Participants are chosen according to procedures and criteria established by each government. In Germany, a student applies to the organization assigned to his/her Bundestag district; final selection is made by the Bundestag member. In the U.S. students for the high school program are selected in a national competition, which will be administered by one organization working on behalf of and in cooperation with the others (see Category B below). Each U.S. organization in categories C, D and E (below) of the program recruits and selects its participants. Placements are made and supervision is handled by the affiliated organizations in Germany, operating under grants from the German Government.

Grant awards will be made in the following categories:

A. High school component—Approximately 300 U.S. and 300 German students will participate annually. The American organization is responsible for: Final processing of the students, pre-departure orientation, travel arrangements, debriefing and follow-up for the U.S. students; arrival orientation for the German students, their placement in schools, selection and orientation of host families, domestic U.S. travel arrangements, supervision and counseling, arrangements for a 3-day visit to Washington, DC, and re-entry training. The Washington program, which is designed to introduce the participants to the federal government, may be subcontracted by the grantee. Grantees handle all administrative and logistical matters, including in-country travel, and coordinate with USIA on the administration of its health and accident insurance plan. Any language training for Americans will be the responsibility of the German partner organization and covered by German Government funds. German students are expected to have sufficient English so as to make language instruction unnecessary. Organizations may include other program elements in their proposals, but should bear in mind that funding is limited.

Organizations may bid on one or more lots of 30 US/30 German students. A maximum of 5 U.S. organizations will be selected for grants in this category.

B. Administration of the recruitment and selection process for the high school component—One organization will be selected to administer a grant to coordinate this process on behalf of and in cooperation with the other grantee organizations. It will be responsible for preparing and distributing informational material, student selection criteria and applications to a wide audience including all public and private secondary schools, the media, and key networks such as the American Association of Teachers of German (the annual total is estimated at 40,000 pieces of mail).

Innovative methods for publicizing the program are welcome, within funding limitations. The organization will screen all written applications and identify a group of semifinalists that reflects population distribution by state. It will assemble and coordinate state selection committees to interview semifinalists in cooperation with the other organizations selected to participate in the program in order to generate a roster of finalists. It will handle the notification of these finalists and work with the other organizations in processing them. The grantee will also set up and maintain a master list of all high school student participants and prepare a list of the Congressmen from whose districts the students are selected. The grantee will also prepare a similar list of German participants and the Congressional districts in which they are hosted. Finally, it will work with the other

grantees in the preparation of general briefing materials for use by all CBYX participants, which are updated biannually. The grant will not exceed $180,000.

C. Young professionals component—One organization will be awarded a grant to administer this component. The U.S. organization will be responsible for: The recruitment and selection of approximately 50 young U.S. men and women aged 18–24, who will study and participate in an internship in a field related to their career interest during the exchange year; their pre-departure orientation (approximately 3 days); international travel arrangements; and close coordination with its German partner to monitor the progress of the U.S. participants and resolve problems. The grantee will also be responsible for arranging and monitoring all activities relating to approximately 75 German young professionals aged 18–22 during their stay in the U.S. It will: Conduct a 3-day arrival orientation; arrange their placement in colleges and practicums (internships); recruit, screen, and orient host families; make arrangements for the group's visit to Washington for a 3-day cultural and educational program; provide supervision and counseling of the participants as needed; handle all administrative and logistical matters including in-country travel; and coordinate with USIA the administration of its health and accident insurance plan. Any language training for Americans will be the responsibility of the German partner organization. Organizations may include other program elements in their proposals, bearing in mind that funding is limited.

Each German participant will be placed in a two or four-year college for a full-time study, a minimum of 12 credit hours, for one semester. The grantee may need to arrange for English classes for those participants whose English is inadequate. To save costs, the organization is encouraged to seek tuition waivers and cost-sharing with cooperating colleges. Each participant will have a full-time practicum or internship in his/her professional field for the second half of the program year. Each practicum should be based on a prospectus of the specific skills and functions that will be mastered, and it should include a structured learning component that enables the participant to gain a perspective on the overall operation of the firm.

In the past, a subsidy has been paid to host families, but in the interest of reducing costs the organization may consider recruiting host families who will provide lodging and food gratis. A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but the stipend should be substantially reduced or eliminated during the second half of the program when the firms or agencies hosting the practicums provide an allowance for living expenses. The current stipend is $225 per month.

D. Vocational School Graduates Component—One grant will be awarded to an organization to administer the program component designed for 20 U.S. vocational school graduates. The organization is responsible for recruiting and selecting 20 men and women aged 18–20 who will complete vocational school studies prior to departure for Germany. The grantee is encouraged to work with vocational educational offices at the state level in addition to administrators of secondary schools with vocational educational divisions in the selection process. The grantee also conducts a pre-departure orientation and, at the conclusion of the program, a debriefing. The grantee will work with its partner in Germany, which is responsible for the following (funded by the German Government): Arrival orientation, up to 2 months of language training, family and school placement, arrangements for a practicum in the participants' fields, counseling and support, excursions, and administration, including insurance.

E. Agricultural Component—One grant will be awarded to an organization to administer a small component for agricultural youth. The grantee will work in Germany with its partner. 12–14 Germans and 12–14 Americans will be chosen annually for a program that combines academic study and practical experience on a farm. At least half of the Germans will be aged 18–22 and will spend one semester full-time at a community college; the second semester is for training. Host farms should design a structured plan to enable the participant to learn about and practice a wide range of skills and tasks on the operation and function of the farm. The other half will attend high school for a full year. The organization: Identifies appropriate community colleges and arranges for the German participants' admission, preferably securing tuition waivers or breaks; recruits, screens, selects and orients host families; conducts an orientation for the participants upon arrival; arranges a mid-year cultural activity appropriate to the group's interests; handles all in-country (U.S.) travel and logistical arrangements; and provides supervision and counseling services. The outbound Americans will be high school upperclassmen or graduates, who will receive some schooling in Germany and receive training on their host family farms. The grantee organization: Participates in the recruitment and selection of American students in conjunction with the organization chosen to coordinate the high school selection process; screens and provides pre-departure orientation to these participants; arranges their international travel; monitors their progress in conjunction with its German partner and engages in program evaluation upon their return to the U.S. and follow-up activities.

Application Procedures

Interested organizations should write or call the Youth Programs Division (address provided above) to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals and the preliminary budget, including specific information on the contents of a complete application. To be eligible for consideration in this competition, an organization must:

1. Be legally incorporated and have a legally incorporated affiliate in Germany;

2. Have a not-for-profit status, as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit ("gemeinnutzige");

3. Be financially solvent, have a demonstrated tract record of responsible fiscal management and be able to meet the accounting and reporting requirements for Agency grants;

4. Have four years' experience in conducting long-term exchange programs (of at least 9 months duration) between the United States and Germany; and

5. Have well-established national volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, or difficulties concerning internships.

Any organization competing for Category A (the high school portion of the program) must be designated by USIA as a Teenager Exchange Visitor Program Sponsor.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth

herein and in the guidelines for preparing proposals prior to funding decisions be delegated officials. All proposals will also be reviewed by the Agency's Office of the general Counsel as well as other Agency offices. The Associate Director for Educational and Cultural Affairs identifies and approves potential grant recipients. Final technical authority for grant awards resides with the Agency Contracting Officer.

Completed applications will be reviewed according to the following criteria:

a. Quality of the program plan and adherence of the proposed activity to the goals and objectives described above;

b. Feasibility of the program plan and institutional capacity of the organization to conduct the program and to manage an increase in its exchange activities in such a way that existing programs are not jeopardized;

c. Track record—the Agency will consider in its review all records on the past performance of organizations;

d. Potential—for organizations that have not received Agency grants for this program, the potential to achieve program goals as demonstrated in the proposal, will be considered;

e. Multiplier effect/impact—the impact of the grant-funded activity on the wider community and on the development of continuing institutional ties;

f. Value to U.S.—German relations—the assessment of USIA offices and USIS Germany of the potential impact and significance of the applicant's involvement in the CBYX; and

g. Cost effectiveness—greatest return on each grant dollar and degree of cost-sharing exhibited.

Notification

All applicants will be notified of the results of the review process on or about December 31, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: May 31, 1991.

Warren J. Obluck,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–14229 Filed 6–13–91; 8:45 am]

BILLING CODE 8230–01–M

Rights of People With Disabilities

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Contingent on availability of funds, The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces its intention to award one grant not to exceed $130,000 to a private not-for-profit organization to conduct a program for 15 young foreign leaders and professionals aged 20–35 from government agencies and private organizations dedicated to assisting people with disabilities. The project is being sponsored in conjunction with the celebration of the 200th anniversary of the Bill of Rights and focuses on the impact of the Americans with Disabilities Act of 1990. The participants will be nominated by USIS missions worldwide and selected by USIA.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. EDT on July 15, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked prior to July 15, 1991 but received at a later date. It is the responsibility of each grant applicant to ensure that their proposal is received by the above deadline. Duration: The duration of the grant will be six months. The earliest date on which grant-funded activities may begin is September 1. No funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application should be submitted to the following office: U.S. Information Agency, Mr. Thomas Leydon, Office of the Executive Director (E/X), room 336, 301 4th Street SW., Washington, DC 20547. (Attn: Rights of People with Disabilities.)

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Bettye Stennis at the Youth Programs Division (E/VY), Office of International Visitors, room 357, 301 4th Street SW., Washington, DC 20547; telephone 202–619–6299.

SUPPLEMENTARY INFORMATION: Programs are authorized under Public Law 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose purpose is "to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life. Projects must conform to all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

The project is designed to generate a dialogue between foreign and American young leaders and professionals who are involved with public policy promoting and defending the rights of people with disabilities. Some of the participants selected may themselves have a disability.

The project should serve to demonstrate the vibrancy of the Bill of Rights 200 years after its enactment. The program should run for 28 days and should begin in Washington with an orientation, an overview of the issues and an examination of the federal government approach to these issues. Special emphasis will be accorded to the impact of the Americans with Disabilities Act, designed to provide equal opportunities for people with disabilities. A national itinerary should include visits to a state capital and to two to three communities for a look at state and local regulation, citizen advocacy, and private and public efforts in such areas as providing access for individuals with disabilities to services and resources. Other possible program activities include: state and national parks where nature trails have been made accessible to people using wheelchairs and those who are visually impaired municipalities where public transportation has been made accessible; training and employement programs. Videos, books and other resource materials may be provided to the participants to take back to their countries for educational purposes. The program should also provide opportunities for the participants to experience the diversity of American society and culture. Homestays and home hospitality are encouraged where possible.

The grantee organization will be responsible for: development of a detailed itinerary and program, including an orientation; travel arrangements; disbursement of per diem and allowances for the participants and escort/interpreters; and final evaluation. It is expected that the USIA grant will cover most of the costs of the project, but cost-sharing by the grantee is encouraged.

The English-speaking ability of the participants should be sufficient to make interpretation unnecessary. USIA will assign two contract escorts to work with the grantee organization and accompany the group throughout the project.

Budget

The budget should be submitted in a 3 column format showing how the costs will be distributed for each line item; i.e.,

Category	USIA	Grantee (incl. in-kind)	Total

USIA will cover international airfare for the participants separately.

Therefore, organizations need not include international travel in their budgets. Assume arrival at and departure from Dulles International Airport, Washington, DC.

Per diem—the allowance for lodging, meals and incidentals—is limited to $120 a day. Less than this amount should be budgeted in those cases where homestays are provided.

The proposal budget should also include:

—Education and cultural allowance at a maximum of $150 per participant.
—Book allowance at a maximum of $50 per participant.
—Return travel allowance of $70 each.
—Domestic travel—USIA estimates the following: Air transportation @ $1,200 per participant and Ground transportation @ $300 per participant

The budget should include per diem @ $120/day and domestic travel for two escorts for 30 days, including one day before the participants arrive and one day after their departure. Salary for the escorts will be provided separately by USIA.

Application Procedures

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project. Organizations with four years or less experience in international exchange will not be eligible to compete for this grant. Experience in programming exchange visitors is desirable.

Interested organizations should write or call the Youth Programs Division (address provided above) to request application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific information on the contents of a complete application.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Incomplete proposals may be judged ineligible. Eligible proposals will be forwarded to a panel of USIA officers for advisory review in conformity with the criteria set forth herein and in the guidelines for preparing proposals prior to funding decisions by delegated officials. Proposals recommended for funding will also be reviewed by the Agency's Office of General Counsel and Contracts office as well as other Agency offices. Final technical authority for grant awards resides with the Agency Contracting Officer.

Completed applications will be reviewed according to the following criteria:

a. Quality of the program plan and adherence of the proposed activity to the objectives set forth in this RFP;

b. Feasibility of the program plan and institutional capacity of the organization to conduct the program;

c. Track record—the past performance of prior grantees;

d. Potential—for organizations that have not received Agency grants, the potential to achieve program goals, as demonstrated in the proposal.

e. Multiplier effect/impact—the impact of the exchange activity as an educational and cultural experience for these young leaders/professionals in assisting people with disabilities in their own countries.

f. Cost effectiveness—greatest return on each grant dollar and degree of cost-sharing exhibited.

g. Bilateral/multilateral value—the assessment of USIA's geographic area desk of the potential impact and significance of the proposed program on international relations.

Notification

All applicants will be notified of the results of the review process on or about August 31. Funded proposals will be subject to periodic reporting and evaluation requirements.

Warren J. Obluck,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-14230 Filed 6-13-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 115
Friday, June 14, 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).

U.S. COMMISSION ON CIVIL RIGHTS
June 12, 1991.

PLACE: Radisson Hotel, 1550 Court Place, Denver, Colorado.

TIME AND DATE: 9:00 a.m.–1:00 p.m., Friday, June 21, 1991.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Agenda

I. Approval of the Agenda
II. Approval of Minutes of May Meeting
III. Announcements
IV. SAC Appointment for Nebraska and Interim Appointments for Kansas and Massachusetts.
V. Staff Director's Report
VI. Future Agenda Items

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Emma Monroig,

Solicitor, (202) 376–8375.

[FR Doc. 91–14385 Filed 6–12–91; 4:02 pm]

BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE 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 2:03 p.m. on Tuesday, June 11, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure certain insured banks.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,700
First American Bank for Savings Boston, Massachusetts
Case No. 47,708
First Texas Savings Association Dallas, Texas

Administrative enforcement proceedings.

Memorandum and resolution regarding the organization of bridge banks.

Matters relating to the Corporation's corporate activities.

Matter relating to a certain financial institution.

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 Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, 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)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 12, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–14285 Filed 6–12–91; 8:45 am]

BILLING CODE 6714–0–M

INTERSTATE COMMERCE COMMISSION

Amended Notice of Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 18, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted. This notice amends the subject matter to be discussed in No. 40473, which appeared in our notice of June 11, 1991 at 56 FR 26851.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30000 (Sub-No. 16), *St. Louis Southwestern Railway Company—Trackage Rights Over Missouri Pacific Railroad Company—Kansas City to St. Louis.*

Ex Parte No. 470 (Sub-No. 1), *In the Matter of William Sheridan.*

Ex Parte No. MC–178 (Sub-No. 5), *Petition for Investigatory Rulemaking: Insurance Surcharges.*

No. 40473, *Armored Car Delivery and Pickup of Interstate Shipments in Delaware—Petition for Declaratory Order,* and a related matter concerning the insurance requirements imposed on interstate motor carriers by the State of Georgia.

Ex Parte No. MC–96 (Sub-No. 7), *Property Broker Practices.*

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14348 Filed 6–12–91; 2:15 pm]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure

(Public Law 94–409)
(5 U.S.C. Sec. 552b)

I, Carol Pavilack Getty, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Friday May 31, 1991 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815. The meeting ended at or about 10:30 a.m. The purpose of the meeting was to decide approximately 12 appeals from National Commissioners' decisions pursuant to 28 C.F.R. Sec. 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting of certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and Victor M.F. Reyes.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: June 11, 1991.

Carol Pavilack Getty,

Chairman, U.S. Parole Commission.

[FR Doc. 91–14353 Filed 6–12–91; 2:16 pm]

BILLING CODE 4410–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 20, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) On-site Representative at Travelers.
(2) Training: Discussion of RRB Policy, Budget Priorities.
(3) Backlog Review Task Force Report: Briefing, and Discussion.
(4) Investment Committee.
(5) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(6) Regulations—Part 203, Employees Under the Act.
(7) Regulations—Parts 209, 211 and 345, Railroad Employers Reports and Responsibilities; Creditable Railroad Compsensation; Employers' Contributions and Contribution Reports.
(8) Regulations—Part 229, Social Security Overall Minimum.
(9) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.
(10) Regulations under the RUIA—Proposed Rule, Part 335, Sickness Benefits.
(11) Regulations—Part 345, Employers' Contributions and Contribution Reports.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: June 11, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–14354 Filed 6–12–91; 2:17 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmopsheric Adminstration

50 CFR Part 685

[Docket No. 910374-1074]

RIN 0648-AD97

Pelagic Fisheries of the Western Pacific Region

Correction

In proposed rule document 91-7761 beginning on page 13611 in the issue of Wednesday, April 3, 1991, make the following corrections:

1. On page 13611, in the heading, the subject matter should read as set forth above.

§ 685.2 [Corrected]

2. On page 13614, in the second column, in § 685.2, in the definition for *Longline gear*, in the third line, "exceed" should read "exceeds".

§ 685.9 [Corrected]

3. On page 13615, in the third column, in § 665.9(b)(2)(xii), "Appropriate" should be "Approximate".

4. On page 13616, in the first column, in § 685.9(k), in the second line, "vessel" was misspelled.

§ 685.12 [Corrected]

5. On the same page, in the second column, in § 685.12(b)(2), in the first line, "After" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91G-0030]

Uncle Ben's, Inc.; Filing of Petition for Affirmation of GRAS Status

Correction

In notice document 91-4792 appearing on page 8781 in the issue of Friday, March 1, 1991, in the second column, under **DATES**, "April 30, 1990" should read "April 30, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89A-0005]

Response to a Request for an Advisory Opinion Concerning the Definition of "Manufactured" with Regard to Device Labeling Requirements; Availability

Correction

In notice document 91-11737 beginning on page 22873 in the issue of Friday, May 17, 1991, make the following corrections:

1.On page 22873:

a. In the second column, in the **SUMMARY**, in the first line, insert "and" after "Food"; and in the third line, "requests" should read "request".

b. In the same column, under **ADDRESSES**, in the ninth line, "self-addressed" was misspelled.

c. In the third column, under **SUPPLEMENTARY INFORMATION**:

(1) In the first paragraph, in the second line from the bottom, "Regulations" was misspellled;

(2) In the third undesignated paragraph, "requires" was misspelled; and

(3) In the fifth paragraph, in the tenth line from the bottom, "achieve" was misspelled.

2. On page 22874, in the first column, in the second paragraph, in the third line, "Advisory Opinions" should read "*Advisory Opinions*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 91-11797 beginning on page 22874 in the issue of Friday, May 10, 1991, make the following corrections:

1. On page 22874, in the first column, in the fifth line from the bottom, insert "Devices" after "Medical".

2.On the same page, in the third column:

a. In the third full paragraph, in the third line, "XomaZyme" was misspelled; and in the fifth line, "steroid" was misspelled.

b. In the sixth paragraph, in the sixth line, "deliberations" was misspelled.

3. On page 22875, in the second column, the first full paragraph should be run in after the fifth line from the top.

4. On the same page, in the same column, in the third paragraph, in the second line "231 CFR" should read "21 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Prescription Drug Marketing Act of 1987; Meetings

Correction

In notice document 91-11798 appearing on page 22876 in the issue of Friday, May 17, 1991, make the following corrections:

1. On page 22876, in the first column, in the **SUMMARY**, in the third line, "Market" should read "Marketing".

2. On the same page, in the second column, under **SUPPLEMENTARY INFORMATION**, in the seventh line, "meeting" should read "meetings".

BILLING CODE 1505-01-D

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information Standard Forms

Correction

In rule document 91-1538 beginning on page 2644 in the issue of January 23, 1991, make the following corrections:

1. On page 2664, in the 1st column, in the **SUMMARY**, in the 19th line, "Office" should read "Official".

2. On the same page, in the third column, in the first paragraph, in the second and fifth lines, "SF313" should read "SF 312".

§ 2003.20 [Corrected]

3. On page 2645, in the 3d column, in § 2003.20(j), in the 18th line "contractor" should read "contractors".

4. On the same page, in the same column, the Director's last name should read "Garfinkel".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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-83 Airplanes

Correction

In rule document 91-11274 beginning on page 21924 in the issue of Monday, May 13, 1991, make the following correction:

On page 21925, in the first column, in § 39.13, in paragraph B., in the third line "covered" should read "corrected".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 91-46]

RIN 1515-AA80

Cargo Release Notification to Certain Vessel and Air Carriers and Bonded Facilities That Are Not Part of the Automated Manifest System

Correction

In rule document 91-11463 beginning on page 22328 in the issue of Wednesday, May 15, 1991, make the following correction:

On page 22330, in § 4.38(a), in the third column, in the eighth line, "mainfest" should read "manifest".

BILLING CODE 1505-01-D

federal register

Friday
June 14, 1991

Part II

Securities and Exchange Commission

17 CFR Parts 200 et al.

Age of Financial Statements of Foreign Private Issuers; Cross-Border Rights Offers; and International Tender and Exchange Offers; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 240

[33-6895; 34-29273; File No. S7-16-91]; International Series Release No. 283]

RIN 3235-AD96

Amendments to Rule and Form Requirements Which Govern Age of Financial Statements of Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to Regulation S-X Rule 3-19, Securities Exchange Act Rule 15d-2 and Forms F-2 and F-3 which relate to the age of financial statements of foreign private issuers that register securities for sale under the Securities Act of 1933. The proposed amendments would generally revise the requirements which govern the age of financial statements in registration statements to conform such ctions of a substantial majority of foreign issuers. Such conformity is intended to reduce the impediments to foreign issuers making securities offerings in the United States.

DATES: Comments should be received on or before July 15, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-16-91. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Teresa Iannaconi, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Richard M. Kosnik, Office of International Corporation Finance, Division of Corporation Finance at (202) 272-3246; George H. Diacont, Office of the Chief Accountant at (202) 272-2130.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rules 3-19(b) [1], 3-19(c) [2] and 3-19(f) [3] of Regulation S-X [4], Rule 15d-2 [5] under the Securities Exchange Act of 1934 ("Exchange Act") [6] and Forms F-2 [7] and F-3 [8] under the Securities Act of 1933 ("Securities Act").[9]

I. Proposed Amendments of Rules Applicable to Age of Financial Statements and Updating Requirements

The Commission is proposing rule amendments to facilitate registration of securities by foreign private issuers. The proposed rule amendments relate to the age of financial statements included in registration statements filed with the Commission and to financial statement updating requirements.

Registration statements that are filed with the Commission by foreign private issuers are subject to requirements in Regulation S-X that govern the form and content of the financial statements. Rule 3-19 of Regulation S-X sets forth the requirements with respect to the age of financial statements of foreign private issuers included in filings. Rules 3-19 (b) and (c) taken together currently require that on the effective date of a Securities Act registration statement—

(1) Financial statements in the filing must be as of a date within six months of the effective date, and

(2) The audited year end financial statements are required to be included in the filing if the effective date falls more than five months after the registrant's fiscal year end.

Although the Commission's rules do not impose any interim periodic reporting requirement on foreign issuers, the effect of these provisions is that foreign private issuers must provide interim financial information more frequently than semi-annually to conduct continuous offerings without interruption and to avoid delays in commencing a registered offering in some circumstances.

The periodic reporting requirements of many foreign jurisdictions do not require quarterly reporting. In recognition of foreign reporting requirements, the Commission's interim reporting requirements for foreign private issuers under the Exchange Act are limited to requiring information on Form 6-K only to the extent it is otherwise provided to shareholders, exchanges or others. Even where annual and interim reporting is required, the time period beyond which updating is required is longer than that allowed in the U.S. in many cases. For example, United Kingdom companies are required to publish audited year end financial statements within 6 months following year end and unaudited semi-annual financial statements within 4 months following the end of the semi-annual period. Based on its home country requirements, a U.K. company with a calendar year end would not have financial statements meeting the requirements of Rule 3-19 from January 1 to October 31 each year. Thus, the period in which an offering could not go effective or during which continuous offerings would be suspended, the so-called "black-out" period, may encompass ten months of the year. The alternative for a foreign issuer is to prepare reports more frequently than required in the issuer's home jurisdiction.

To enable foreign issuers to make offerings in the U.S. and to facilitate their continuous offerings without imposing the U.S. quarterly reporting scheme upon such issuers, it is proposed to amend Rules 3-19 (b) and (c) to establish a scheme in which there will be no "black out periods" as long as the foreign issuer can provide audited fiscal year financial statements within six months following the end of the fiscal year and unaudited interim financial statements within four months following the end of the semi-annual interim period. Under this scheme a registration statement of a calendar year company could go effective as late as June 29, xxx1 with reconciled unaudited financial statements only as recent as June 30, xxx0.

The proposed amendments would extend the Securities Act and Exchange Act registration statement updating requirement for annual audited financial statements of foreign private issuers by one month and would extend the updating requirement for interim unaudited financial statements by four months. In addition, the maximum age of financial statements permitted to be used in a Securities Act filing would be extended from six months to one year. The semi-annual updating proposal corresponds to the interim reporting requirement in EEC Directive 82/121/EEC. It also corresponds to or extends beyond the interim reporting due date of all major countries which have an interim reporting requirement. The annual updating proposal corresponds to or extends beyond the annual reporting deadline of a substantial majority of the major industrial countries, with the exception of Germany which permits annual audited financial statements to be filed up to nine months following the end of the fiscal year. Other countries have flexible

[1] 17 CFR 210.3-19(b).
[2] 17 CFR 210.3-19(c)
[3] 17 CFR 210.3-19(f).
[4] 17 CFR 210.
[5] 17 CFR 240.15d-2.
[6] 15 U.S.C. 78a *et seq.*
[7] 17 CFR 239.32.
[8] 17 CFR 239.33.
[9] 15 U.S.C. 77a *et seq.*

filing requirements which are linked to delivery of information prior to the annual shareholders' meeting which may be more than six months following the end of the fiscal year.

The Commission requests commenters to address whether the proposed one month and four month extensions of the present annual and semi-annual updating requirements for foreign private issuers should be longer or shorter in view of the diversity of updating requirements in foreign countries and the EEC directive. Commenters should address the impact on issuers whose home country requirements do not correspond to the proposed reporting scheme. Commenters are requested to provide information concerning the extent to which the proposal or any alternative addresses both formal requirements and practice with respect to typical updating in foreign countries and by foreign issuers. Commenters are also requested to address whether the proposed updating scheme would provide financial information on a sufficiently current basis to adequately serve investors' decision making needs.

II. Proposed Amendment to Requirement To Reconcile Financial Information Otherwise Provided

Rule 3–19(f) requires interim financial information that is made available to shareholders, exchanges or others on a more frequent basis than that required by Rules 3–19 (b) and (c) to be included in any registration statement filed with the Commission. The rule requires this additional information to be reconciled to U.S. generally accepted accounting principles (GAAP). The proposed amendments would provide that such additional information need not be reconciled to U.S. GAAP if adequate narrative disclosures are provided. Specifically, if a registration statement includes interim financial information which is more current than the latest reconciled annual or semi-annual financial statements, the later financial information need not be reconciled to U.S. GAAP provided that any material variation in accounting which was not previously disclosed and quantified in the reconciliation for an annual or semi-annual period is described and the quantified effects of the material variation are disclosed. This should overcome one disincentive to more frequent reporting of interim financial information.

For example, a foreign private issuer's previously reconciled accounting differences may include amortization of goodwill, pension benefit accruals or revenue recognition timing differences. Interim information filed pursuant to this rule may report an unusual event such as a material transaction which has been accounted for as a sale under the issuer's home country accounting principles but would be accounted for as a financing under U.S. GAAP. Since the annual and semi-annual financial statements disclose the quantified reconciliation of all other items, a report for a later interim period in which the unusual transaction is reported would disclose the fact and quantified effects of the difference between the foreign and U.S. accounting principles applied to this transaction only.

It is requested that commenters address whether the proposed disclosure in place of the current quantified reconciliation is adequate to inform investors of significant differences between U.S. and the issuer's home country accounting principles. Commenters should also indicate whether the proposed modification would encourage foreign issuers to provide more current periodic financial information.

III. Other Proposals Relating to Financial Statement Updating

Other amendments are proposed to:

(1) Clarify language in Forms F–2 and F–3 to indicate that it is permissible to incorporate interim financial statements which may be filed on Form 6–K (which is not deemed filed otherwise); and

(2) Amend Rule 15d–2 to require foreign private issuers to file special year end financial statement reports (subsequent to the effectiveness of a registration statement that did not contain the audited financial statements for the most recent year end) by the later of 90 days following the effective date or six months following the registrant's fiscal year end. This would amend the current rule to recognize that foreign issuers are allowed up to six months following the end of the fiscal year within which to file their annual report including audited year end financial statements.

IV. Cost-Benefit Analysis

The Commission is not aware of any costs that will result from the proposed amendments to rules and forms relating to the age of financial statements of foreign private issuers, but as foreign issuers will be able to avoid expenses associated with more frequent financial statement updating and reconciliation, benefits are expected to result for such issuers. U.S. issuers are unaffected by these proposed amendments.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S. C. 605(b)), the Chairman of the Commission has certified that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. Members of the public who wish to obtain a copy of the Regulatory Flexibility Certification should contact Teresa Iannaconi, (202) 272–2553, Office of the Chief Accountant, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 210, 239 and 240.

Accounting, Reporting and recordkeeping requirements, Securities

VI. Text of Rule and Form Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S. C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78l, 78m, 78n, 78o, 78w(a), 79e(a), 79e(b), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

2. The authority citation following § 210.3–19 is removed.

3. By amending § 210.3–19 by revising paragraphs (b), (c) and (f) to read as follows:

§ 210.3–19 Special provisions as to financial statements for foreign private issuers.

* * * * *

(b) If the filing, other than an annual report on Form 20–F, is made within six full months after the end of the registrant's fiscal year and if the audited balance sheet for the most recent fiscal year is not available, the audited balance sheets in the filing may be as of the end of the two preceding fiscal years; *Provided,* That on the effective date the filing shall include a balance sheet, which may be unaudited, as of an interim date at least as current as the end of the registrant's most recently

completed semi-annual period (except as permitted in paragraph (e) of this section); *And provided further,* That if the effective date falls six months or more subsequent to the end of the most recent fiscal year, the filing shall include an audited balance sheet for the most recent fiscal year.

(c) If the filing is made later than ten full months after the end of the most recent fiscal year, the filing shall also include a balance sheet, which may be unaudited, as of an interim date at least as current as the end of the registrant's most recently completed semi-annual interim period (except as permitted in paragraph (e) of this section) preceding the effective date.

* * * * *

(f) Notwithstanding the above provisions of this rule, if a foreign private issuer prepares and discloses to its shareholders or otherwise makes public, pursuant to applicable foreign laws or regulations or stock exchange requirements or otherwise, interim financial information relating to revenues and income that is more current than the financial statements required by this rule, such information shall be included in the filing and shall be accompanied by:

(1) A description of material variations in the accounting principles, practices and methods used in preparing the financial statements from the principles, practices and methods accepted in the United States; and

(2) Quantification of any material variations that are not quantified with respect to their occurrence in the annual or semi-annual financial statements included in the filing.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

5. By amending Form F–2 (§ 239. 32) by revising paragraph (b)(2) of Item 11 to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

Note: The text of Form F–2 is not and the amendment will not be included in the Code of Federal Regulations.

Form F–2.—Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Material Changes

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), interim financial statements necessary to comply with that rule shall be presented either in the prospectus, an amended Form 20–F or in a Form 6–K which has been incorporated by reference into the prospectus.

* * * * *

6. By amending Form F–3 (§ 239.33) by revising paragraph (b)(2) of Item 11 to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 for securities of certain foreign private issuers offered pursuant to certain types of transactions.

Note: The text of Form F–3 is not and the amendment will not be included in the Code of Federal Regulations.

Form F–3.—Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Material Changes

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), interim financial statements necessary to comply with that rule shall be presented either in the prospectus, an amended Form 20–F or incorporated by reference into the prospectus from a Form 6–K in which case the prospectus shall disclose that the Form 20–F has been so amended or that the interim information has been provided in a Form 6–K which has been incorporated by reference.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

8. By amending § 240.15d–2 to add the following language at the end of paragraph (a) to read as follows:

§ 240.15d–2. Special financial report.

(a) * * * If the registrant is a foreign private issuer as defined in Rule 405 (17 CFR 230.405 of this Chapter), then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed by the later of 90 days after the date on which the registration statement became effective, or within six months following the end of the registrant's latest full fiscal year.

* * * * *

Dated: June 5, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–13758 Filed 6–13–91; 8:45 a.m.]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 239 and 240

[Release Nos. 33–6896; 34–29274; International Series Release No. 284; File No. S7–17–91]

RIN 3235–AD44

Cross-Border Rights Offers; Amendments to Form F–3

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and forms.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment a new rule and registration form under the Securities Act of 1933 (the "Securities Act") to facilitate rights offerings by foreign private issuers to their existing U.S. shareholders, many of whom currently are excluded from or cashed out of these offerings. A small issue exemptive rule is being proposed under section 3(b) of the Securities Act covering up to $5 million of equity securities offered or sold in the United States in an eligible rights offering. The new registration form would permit registration of rights offerings of any size under the Securities Act on the basis of home country disclosure and procedures. The proposed rule and form would not be available to investment companies registered, or required to be registered, under the Investment Company Act of 1940.

Also being proposed today are amendments to Securities Act registration Form F–3 to permit foreign private issuers that file periodic reports under the Securities Exchange Act of 1934 (the "Exchange Act") to register rights offerings and offerings in connection with dividend or interest reinvestment plans, conversion of convertible securities or exercise of warrants on that Form, even if these issuers do not have a three-year reporting history under the Exchange Act or have a minimum public float of $300 million. Finally, the Commission is proposing for comment exemptions from

the operation of Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act pursuant to exemptive powers under Rule 10b–6 to facilitate rights offerings made in reliance on the proposed rule or registered on the proposed registration form.

DATES: Comments should be received on or before September 9, 1991.

ADDRESSES: Comment letters should reference File No. S7–17–91. They should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying at its Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Victoria C. Choy or C. David Messman, Office of International Corporate Finance, Division of Corporation Finance, at (202) 272–3246; Nancy J. Sanow or Elliot R. Levine, Office of Trading Practices, Division of Market Regulation, at (202) 272–2848, with respect to issues regarding Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act; and Angela C. Goelzer, Division of Investment Management, at (202) 272–2751, regarding Investment Company Act issues; Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment Rule 801 and Form F–11 under the Securities Act.[1] Also being proposed are amendments to Rules 174,[2] 464 [3] and 473 [4] and Forms F–2 [5] and F–3 under the Securities Act.[6] In addition, the Commission is proposing new Rules 441 and 468 under the Securities Act and new Rule 12h–5 under the Exchange Act. Finally, the Commission is proposing exemptions from the operation of Rules 10b–6,[7] 10b–7 [8] and 10b–8 [9] under the Exchange Act [10] pursuant to exemptive powers under Rule 10b–6, in connection with rights offerings made in reliance on proposed Rule 801 or registered on proposed Form F–11.

Table of Contents

I. Executive Summary.
II. Background.
A. Rights Offers by Foreign Private Issuers.
B. Structure of Rights Offers.
III. The Proposed Exemption and Securities Act Registration Form.
A. Common Eligibility Requirements.
1. General.
2. Eligibility of Issuers.
3. Eligibility of Securities Being Offered.
4. Eligibility of Transaction.
B. The Proposed Exemption.
C. Registration on Proposed Form F–11.
D. Exchange Act Reporting.
E. State Securities Regulations.
IV. Amendments to Form F–3; Relationship of Proposed Form F–11 and Other Registration Forms.
A. Amendments to Form F–3.
B. Relationship with Other Registration Forms.
V. Exemptions Under Rules 10b–6, 10b–7 and 10b–8 Under the Exchange Act.
VI. Request for Comments.
VII. Cost-Benefit Analysis.
VIII. Regulatory Flexibility Act Certification.
IX. Statutory Basis and Text of Proposed Rule and Form.
X. Text of Proposals.

I. Executive Summary

Over the last decade, U.S. investors have significantly increased their investments in the securities of foreign issuers through registered public offerings and private placements in the United States, as well as through purchases in overseas markets. During the last five years, U.S. investors bought on a gross basis approximately $500 billion of foreign equity securities and approximately $1.2 trillion of foreign debt securities.[11] In 1990, U.S. persons invested, net of sales during that period, $30.8 billion in foreign securities, up from $19.1 billion in 1989.[12] Currently, approximately 425 foreign issuers, representing 30 countries, have their securities traded on the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX"), or the National Association of Securities Dealers Automated Quotation ("NASDAQ") System. In addition to these foreign issuers, substantially all of which are reporting companies under the Exchange Act, approximately 1,100 additional foreign private issuers with securities trading in the over-the-counter market, representing some 25 different countries, rely on the information supplying exemption from Exchange Act reporting provided by Rule 12g3–2(b) under the Exchange Act.[13]

Unlike their U.S. counterparts, foreign issuers frequently engage in rights offerings, in large part due to legally mandated preemptive rights. U.S. investors, particularly those holding over-the-counter securities, are often excluded from or cashed out of [14] these rights offerings because of foreign issuers' reluctance to comply with the disclosure requirements and accounting rules applicable to Securities Act registration statements, or to incur the obligation to file periodic reports under the Exchange Act required of those who conduct public offerings in the United States. There have even been instances where foreign issuers which are already reporting companies under the Exchange Act have excluded their U.S. shareholders from rights offerings, purportedly because of concerns with U.S. processing time at both the federal and state levels.

The exclusion or cashing out of U.S. investors not only denies these investors a potentially valuable investment opportunity, but may also subject them to substantial dilution. Depositary banks for American Depositary Receipts ("ADRs") estimate that in 1990 alone, U.S. investors that own foreign securities in the form of ADRs were excluded from more than 25 rights offerings and cashed out of approximately 60 such transactions.

To facilitate the extension of rights offerings to U.S. investors and to encourage foreign authorities to prohibit discriminatory treatment of U.S. investors, the Commission is proposing a small issue exemption under section 3(b) of the Securities Act [15] for specified equity rights offerings not exceeding $5 million in the United States, and a new registration form that would allow the use of home country disclosure documents in the case of larger equity rights offerings.

In addition, the Commission is proposing to amend Form F–3 to extend the availability of that Form for registration of rights offerings and other specified transactions to all reporting foreign private issuers, even those that do not meet the current registrant requirements under Form F–3 of a minimum three-year reporting history

---

[1] 15 U.S.C. 77a *et seq.*
[2] 17 CFR 230.174.
[3] 17 CFR 230.464.
[4] 17 CFR 230.473.
[5] 17 CFR 239.32.
[6] 17 CFR 239.33.
[7] 17 CFR 240.10b–6.
[8] 17 CFR 240.10b–7.
[9] 17 CFR 240.10b–8.
[10] 15 U.S.C. 78a *et seq.*

[11] U.S. Treasury Bulletin (various issues).
[12] Wall Street Journal, April 4, 1991, at C–1 and C–23.
[13] 17 CFR 240.12g3–2(b). For the most recent list of foreign private issuers supplying current information to the Commission pursuant to Rule 12g3–2(b), see Exchange Act Release No. 28889 (Feb. 15, 1991) (56 FR 7424).

[14] Where there is a trading market for the rights in the issuer's home country, the issuer may cash out its U.S. shareholders by causing the rights that would otherwise be distributed to them to be sold in the open market on their behalf. U.S. investors that are cashed out generally do not receive the full benefit of the offering, however, as they are usually responsible for selling expenses and other transaction costs, including underwriters' commissions. Exchange rate fluctuations may also affect net proceeds.
[15] 15 U.S.C. 77c(b).

under the Exchange Act and a minimum $300 million public float.

The proposals made today are based on the fundamental premise that the interests of those U.S. investors that have already made an investment in a foreign issuer, frequently on the bases solely of disclosure required by foreign law, would be better served by facilitating the extension of rights offerings of additional securities to them than by insisting on U.S. disclosure. The Commission requests comment on whether the benefits to U.S. investors that derive from participating in offerings otherwise closed to them would outweigh the risks that may result from having to make investment decisions on the basis of disclosure documents and procedures used in foreign jurisdictions. The Commission also solicits comment on whether it would be preferable to continue to provide case-by-case relief based on specific assessments of the need to accommodate foreign laws and procedures in specific situations. Commenters are requested to provide the Commission with empirical data regarding the exclusion or cashing out of U.S. shareholders in foreign issuer rights offers.

II. Background

A. Rights Offers by Foreign Private Issuers

Although not common in the United States,[16] rights offerings are frequently used by issuers in many foreign jurisdictions [17] to raise working capital or to finance extraordinary corporate transactions, including acquisitions.[18]

The United Kingdom [19] and many European countries, including France,[20] Germany,[21] Italy,[22] and the Netherlands,[23] have preemptive rights statutes. In addition, the European Economic Community ("EEC") has promulgated a Directive requiring public companies issuing shares for cash, subject to certain limited exceptions, to offer the shares on a preemptive basis to existing shareholders on a pro rata basis.[24]

In jurisdictions with preemptive rights statutes, a rights offer may be the only means of issuing additional equity securities of a class that is outstanding. To protect existing securityholders against dilution, these statutes generally prohibit issuers from issuing additional securities unless existing holders of securities of that class have been given a pro rata preemptive or preferential right to subscribe for them. Moreover, even though some statutes permit securityholders to waive their preemptive rights by vote, thereby allowing the issuer to offer securities directly to the public,[25] waiver of preemptive rights in jurisdictions where rights offers are customary is usually limited.[26]

In addition to a purely statutory basis for preemptive rights, listing requirements of certain foreign stock exchanges located in jurisdictions with preemptive rights statutes also mandate that issuers grant such rights to securityholders under certain circumstances.[27] Even where there is no preemptive rights statute, some foreign stock exchanges require preemptive rights clauses in listing agreements.[28]

Finally, although transactions may be structured around the application of statutory or exchange-required preemptive rights, market practice and business custom sometimes force issuers to issue securities by means of rights offers.[29] Moreover, as rights offers can be beneficial to existing securityholders,[30] some issuers may grant such rights voluntarily in order to promote good relations with existing securityholders.[31]

---

[16] In recent years, relatively few U.S. companies have registered securities for rights offerings. See J. Nagdeman, "Vanishing Rights—Offerings to Shareholders Grow Few and Far Between," Barron's, May 2, 1977, at 11. Although there is a common law basis for preemptive rights in the United States (see, *e.g.*, *Stokes* v. *Continental Trust Co*, 186 N.Y. 285, 78 N.E. 1090 (1906)), all states and the District of Columbia have now adopted statutes that limit or authorize corporations to deny or limit common law preemptive rights. Thirty states and the District of Columbia have enacted statutes which either expressly grant or implicitly recognize preemptive rights but allow corporations to deny or limit such rights in their articles of incorporation. The other twenty states have enacted statutes which deny preemptive rights except to the extent, if any, that such rights are provided in the articles of incorporation. Model Business Corporation Act Annotated, § 6.30 (3d Edition, 1990 Supplement).

[17] Rights offers are particularly common in the United Kingdom and in Europe, where many countries have some form of preemptive right statutes. The notable exception is Switzerland. Rights offers are also common in British Commonwealth countries such as Australia and South Africa.

[18] For instance, WPP Group PLC, a U.K. corporation, financed its 1989 acquisition of The Ogilvy Group, Inc. through a rights offering of convertible preferred shares to the holders of its ordinary shares, in addition to a public offering of warrants to purchase ordinary shares, and bank loans. WPP's prior acquisition of J. Walter Thompson was also financed through a rights offering. For a description of the use of rights offerings by British companies to raise capital to finance acquisitions of companies, see David W. Heleniok and George Spera, "Role of British Purchasers in Corporate Acquisitions," New York Law Journal, Oct. 7, 1987, at 31.

[19] The Companies Act 1985 ("Companies Act 1985"), sections 89(1), 90(b).

[20] Law No. 73–1196 of 27 December 1973, section 178.

[21] Aktiengesetz (Stock Corporation Act), section 221(4).

[22] Italian Civil Code, Article 2441(1).

[23] Civil Code of the Netherlands, Book 2, Article 96a. Statutory preemptive rights in the Netherlands are operative only where the articles of association of the issuer are silent on the question of shareholder preemptive rights.

[24] Second Company Law Directive of 1976, Article 29 (published January 31, 1977). The EEC Directive also sets forth certain procedures regarding notifying shareholders of a rights offer, exercise periods for rights offers and disapplication of preemptive rights. EEC member countries are required to enact legislation and/or regulations in order to give effect to EEC Directives.

[25] See, e.g., The Companies Act 1985, section 95 (United Kingdom); Aktiengesetz, sections 56, 71 (Germany); Law No. 85–1321 of 14 December 1985, section 186 (France).

[26] Section 95 of the Companies Act 1985 permits limited disapplication upon approval by at least 75 percent of the shareholders. Waivers of preemptive rights by U.K. shareholders are generally subject to various limitations.

[27] The rules of the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (the "ISE") and of U.K. securities self-regulatory organizations require that securities to be sold to the public must first be offered to a company's existing shareholders in satisfaction of their statutory preemptive rights. See Admission of Securities to Listing, section 1, Ch. 1, ¶ 15.

[28] The listing requirements of the Australian Stock Exchange, for example, require that an issuer not make an offering of its securities that would increase the amount of outstanding securities by more than 10% unless such offering is either (1) limited to existing securityholders, or (2) made to the public after being approved by a majority of existing securityholders. See Australian Stock Exchange Listing Requirements § 3E.

[29] In 1987, for example, several large U.K. issuers made offerings to the public by either securing the waiver of preemptive rights by shareholders or by avoiding application of preemptive rights by offering debt with conversion rights. These attempts have mobilized institutional holders to take action to protect preemptive rights. The investment committees of the Association of British Insurers and the National Association of Pension Funds, two associations which represent most of the U.K.'s institutional shareholders, for instance, have issued guidelines favoring rights offers as a method of raising equity capital. Publicly traded U.K. companies, therefore, may have difficulties obtaining shareholder approval of proposals not in compliance with such guidelines. See Wall Street Journal, Apr. 17, 1987, at 20.

[30] At the very least, participating securityholders have the opportunity to protect themselves against ownership dilution when the issuer proposes to issue additional securities of the same class as that held by them. When the issuer offers a new class of securities for sale, a rights offer affords participating securityholders the opportunity to increase their investment in the issuer, often at a price that represents a discount from the anticipated market value. See n. 34 *infra* and accompanying text.

[31] Unlisted Australian companies, for instance, often engage in rights offerings although they are not required to do so. See n. 28 *supra*.

B. Structure of Rights Offers

In a rights offer, an issuer offers to sell securities to its existing securityholders for cash through the exercise of subscription or preferential rights granted to them, usually in proportion to the amount of the issuer's securities of the class being offered held by them on the record date for the offering. Upon the expiration of a specified exercise period,[32] the unexercised rights lapse and the unsubscribed for securities are either taken up by underwriters and offered to the public, if the issue is being underwritten, or, in the case of a clawback issue,[33] sold to institutional or other investors with whom the issuer has initially placed the securities.

As an inducement to the offerees, the exercise price of the distributed rights typically is set at a discount from the current market price for the securities or, where there is no public market at the time of the rights offer, at the estimated price at which the underlying securities are expected to trade.[34] Traditionally, rights offers have been limited to the offer and sale of securities of the same class as that held by the recipients of the rights being distributed.[35] Some recent offers, however, have involved newly created classes of securities.[36]

Conventional rights offers often are underwritten on a standby basis,[37] with the underwriters agreeing to take up the securities in the event the rights are not fully subscribed. Under these arrangements, the issuer typically distributes provisional allotment letters or similar instruments evidencing the issuance of the underlying securities in "nil-paid" form to existing securityholders. When the issuer receives the full subscription price accompanied by executed allotment letters, the securities become fully paid and nonassessable. Unlike a conventional rights offering, in a rights offering structured as "clawback" issue, the issuer places the securities it proposes to offer with underwriters or institutional investors on a firm commitment basis, subject to the prior right of existing securityholders to apply for them on a pro rata basis. Since the clawback arrangement does not require mailing provisional allotment letters or other evidence of issuance of rights to securityholders, it is particularly suited to markets where bearer securities are common and where it is customary for issuers to communicate with securityholders via notices published in newspapers.[38]

When the rights distributed are by their terms transferable, a trading market for the rights generally develops during the exercise or subscription period, and securityholders who do not wish to exercise their rights may sell them to third parties.[39] The issuer may also cause rights to be sold on behalf of security holders who are not permitted to participate, thereby cashing out such holders. Proceeds from the sale of rights may represent a profit, if the discount at which the rights had been issued is sufficient to offset brokers' fees and other selling expenses.[40] However, where rights are issued in "nonrenounceable" or nontransferable form, or if the offering is structured as a clawback issue, which does not involve the distribution of securities in nil-paid form, the non-subscribing securityholders will realize no economic benefit from the offering, since the rights distributed to them cannot be traded or sold.

III. The Proposed Exemption and Securities Act Registration Form

A. Common Eligibility Requirements

1. General

As described in greater detail below, the proposed small issue exemption, new Rule 801, and the proposed registration form, Form F–11, would be made available to the same class of foreign private issuers and the same class of offerings, with one exception. Because of the statutory limitation on the Commission's authority under Section 3(b) of the Securities Act, the amount of equity securities that may be offered or sold in the United States in any offering made in reliance on proposed Rule 801 may not exceed $5 million in the aggregate.

2. Eligibility of Issuers

Proposed Rule 801 and Form F–11 would be available only for primary offers and sales of securities of eligible foreign issuers made pursuant to specified rights offerings, and not for the resale of such securities. Any foreign private issuer [41] filing reports with the Commission pursuant to sections 13(a) or 15(d) of the Exchange Act [42] which is current with respect to such filing obligations at the time of the offering would be eligible to rely on the

[32] In the United Kingdom, for instance, the Companies Act 1985 requires that the subscription period be not less than 21 days. See Companies Act 1985, section 90(6). Under German law, rights offers must be kept open for at least two weeks (see Aktiengesetz, section 186), although it is common for the subscription period to run for at least fifteen calendar days, and sometimes for as long as four to six weeks. The Civil Code of the Netherlands requires that rights offers be kept open for a minimum of 14 days after public announcement of the offering. In practice, however, rights offers are usually kept open for a minimum of two to three weeks after public announcement. See also n. 39, *infra*.

[33] See n. 38 and accompanying text, *infra*.

[34] In the United Kingdom, the exercise prices of subscription rights frequently represent a twelve to fifteen percent discount from market prices of the underlying securities, but the discount may be substantially higher in large offerings. In Japan, where rights issues have not been common but appear to have regained some popularity recently, rights have been offered to existing securityholders at deep discounts to the market price of the underlying securities.

[35] Statutory preemptive rights typically are granted to holders of equity securities only, including preferred shares in some cases. For instance, under section 89(1) of the Companies Act 1985 (United Kingdom), preemptive rights apply to all "relevant shares", defined in section 94(5) of that statute to include not only ordinary shares but all shares that carry an unlimited right to participate in income or capital of the issuer, such as preference shares. However, issuers have often extended rights offerings to holders of securities that are exercisable or convertible into, or exchangeable for, equity securities. In the United Kingdom, for example, even though warrants and interests in convertible loan stock are not relevant shares for purposes of the Companies Act 1985, holders of these securities frequently have extracted a contractual obligation from the issuer to include them in rights offers. By contrast, in the Netherlands, statutory preemptive rights apply to issuances of equity securities as well as equity-related securities, including options, warrants and convertible debt.

[36] See n. 18 *supra*.

[37] Rights offers issued at a deep discount often are not underwritten since the deep discount tends to ensure that the rights will be taken up by existing securityholders.

[38] The clawback arrangement is favored in Germany but it is not common in the United Kingdom.

[39] In conventional rights offers in the United Kingdom, subscription rights represented by provisional allotment letters distributed to shareholders are usually transferable during the subscription period, which typically ends two business days prior to the closing and settlement date for the rights exercise. In the Netherlands, rights issued by companies listed on the Amsterdam Stock Exchange usually are traded on that Exchange during the subscription period, with closing and settlement of the rights exercise occurring ten days after the subscription period has expired. In Germany, where the securities to be sold pursuant to rights offers typically are initially placed with banks (which act as underwriters for the issue), subject to the clawback rights of existing shareholders, the shareholders may be granted an additional four to six week grace period, after the official subscription period has expired, to subscribe for the securities. During the period from the expiration of the subscription period to closing, rights that are not taken up by shareholders may be sold by underwriters or other intermediaries, and the net proceeds will be remitted to the shareholders to whom the sold rights were allocated.

[40] Selling expenses, including commissions to underwriters, brokers' fees and stamps or transfer taxes, are generally borne by the securityholders and will be deducted from the proceeds to be paid to them.

[41] "Foreign private issuer" is defined in Rule 3b–4 under the Exchange Act (17 CFR 240.3b–4) and Rule 405 under the Securities Act (17 CFR 230.405).

[42] 15 U.S.C. 78m, 78*o*(d).

proposed Rule or register securities on the proposed Form. A foreign private issuer exempt from the requirements of section 12(g) under the Exchange Act pursuant to Rule 12g3–2(b) would also be eligible to rely on the proposed exemption or use the proposed Form if it has a class of equity securities listed or quoted on at least one designated offshore securities market,[43] is in compliance with the listing requirements applicable to such securities and, in addition, either (a) has maintained such listing or quotation continuously for 36 months immediately prior to the commencement date of the offering, or (b) has a public float in the listed securities of not less than $75 million.[44] As described below, issuers registered, or required to be registered, under the Investment Company Act of 1940 ("Investment Company Act") [45] may not participate in the proposed system.

Issuer eligibility would be determined as of the commencement date of the offering. In this regard, a rights offer made in reliance on proposed Rule 801 would be deemed to have commenced upon the date the securities are first offered to securityholders that are U.S. holders and, in the case of registration on proposed Form F–11, upon filing of the registration statement with the Commission. For purposes of satisfying the proposed eligibility criteria, a nonreporting foreign issuer may establish an exemption under Rule 12g3–2(b) at the same time as it commences the offering in the United States or, in the case of registration on proposed Form F–11, as it files the registration statement with the Commission.

Proposed Rule 801 and Form F–11 incorporate the definition of "designated offshore securities market" from Regulation S. Nineteen offshore exchanges and non-exchange securities markets are currently designated as such markets under Regulation S, which also provides that the Commission may designate additional markets that have some or all of the attributes listed in Regulation S. Factors to be considered include, among other things, the market's operating history, whether it is subject to oversight by a foreign government or self-regulatory body, whether oversight standards are set by law and whether there are price quotation and clearing systems.[46] Comment is sought regarding whether it is appropriate that issuer eligibility of the proposed system be based on listing on a Regulation S designated offshore securities market. For instance, should issuers whose equity securities trade in non-exchange securities markets be excluded? Should access to the proposed system be confined to issuers whose securities are traded on exchanges located in countries that have written memoranda of understanding or other agreements ("MOUs") with the Commission that provide the Commission with mechanisms for obtaining information regarding such offerings from appropriate authorities in those countries? [47]

Requiring that the issuer be either reporting under the Exchange Act or exempt pursuant to Rule 12g3–2(b) at the time the offering commences in the United States assures that information about the issuer would be publicly available to investors in this country, including at a minimum information the issuer makes public or otherwise makes available to its shareholders in its home country. The additional three-year listing history or $75 million public float eligibility requirement in the case of issuers relying on the exemption under Rule 12g3–2(b) are intended to protect against use of the proposed system by start-up companies or insubstantial issuers to raise large amounts of capital in the United States without complying with the normal registration requirements of the Securities Act.

The Commission previously has proposed a similar three-year listing history eligibility requirement for Canadian issuers who wish to participate in rights offerings under the multijurisdictional disclosure system with Canada (the "Canadian MJDS").[48] Canadian MJDS was approved by the Commission on May 30, 1991. The three-year listing requirement for use of Form F–7 as approved would be changed from the reproposal to a combined one-year listing with a designated Canadian exchange and three-year reporting history with Canadian securities regulators requirement.[49] Recognizing that many substantial issuers may not have the requisite listing or operating history to qualify, however, a public float test is being proposed today as an alternative. Comment is requested regarding whether it is appropriate to provide for a size-of-issuer test as an alternative to requiring a three-year listing history on a designated market for determining the eligibility of nonreporting issuers. Should the alternative test be based on the issuer's public float as proposed, or on its net assets or net worth? What would be the appropriate level of the requirement? Should the proposed minimum of $75 million be reduced, for instance, to $10 million, or be raised to as much as $100 million?

Proposed Rule 801 and Form F–11 would permit any foreign private issuer formed as a result of a merger, a spinoff, an arrangement or other reorganization requiring the approval of shareholders to tack on the listing history of its predecessors for purpose of satisfying the three-year listing history requirement, if it is unable to satisfy the listing history requirement on its own. Comment is requested regarding whether it is appropriate to permit the inclusion of the listing histories of predecessors in determining the eligibility of nonreporting issuers, and whether a three-year reporting requirement, as opposed to a listing requirement, would be more appropriate, given the regulatory purpose of the system being proposed today.

---

[43] As defined in Rule 902 of Regulation S under the Securities Act (17 CFR 230.902(a)). Although the Johannesburg Stock Exchange is a designated offshore securities market, new investments in securities of certain South African issuers may be prohibited by the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 94–440) (October 2, 1986) (22 U.S.C. 5001).

[44] See proposed Rule 801(c)(7) and General Instruction B.(2) to proposed Form F–11.

[45] 15 U.S.C. 80a *et seq.*

[46] 17 CFR 230.902(a). The Commission has delegated the authority to designate additional markets as designated offshore securities markets to the Director of the Division of Corporation Finance. Since the adoption of Regulation S, the Director has designated the Helsinki Stock Exchange (*see* Letter re Shearson Lehman Hutton Inc. (July 7, 1990)) and the Mexican Stock Exchange (see Letter re Comision Nacional de Valores (Feb. 15, 1991)) as additional designated offshore securities markets for purposes of Regulation S. The staff of the Commission has also issued an interpretive letter clarifying that trades executed on the Stock Exchange Automated Quotation (SEAQ) international system, a part of the ISE, a designated offshore securities market, would be deemed trades executed on a designated offshore securities market. (See Letter re First Boston Corporation (June 14, 1990).)

[47] The Commission has entered into MOUs with foreign governments or securities authorities in Brazil, Canada, France, Japan, Mexico, the Netherlands and the United Kingdom. The Commission has entered into more limited statements of intent of mutual cooperation with Hungary and Italy. Approximately one-half of the current designated offshore securities markets are located in countries the authorities of which have signed comprehensive MOUs with the Commission. The designated offshore securities markets located in countries without such agreements are the Australian Stock Exchange Limited, the Bourse de Bruxelles, the Eurobond market, the Frankfurt Stock Exchange, the Stock Exchange of Hong Kong Limited, the Johannesburg Stock Exchange, the Bourse de Luxembourg, the Stockholm Stock Exchange, the Zurich Stock Exchange and the Helsinki Stock Exchange.

[48] See Securities Act Release No. 6879 (Nov. 2, 1990) (55 FR 46288) ("Canadian MJDS Reproposing Release"), at 46295.

[49] The Commission authorized the publication of the adopting release of Canadian MJDS on May 30, 1990.

3. Eligibility of Securities Being Offered

Only equity securities of the same class as that held by the offerees in the United States may be offered or sold in reliance on the proposed Rule or pursuant to registration on the proposed Form.[50] The Commission requests comment on whether the proposed system should be made available to offerings of securities of any class of an eligible issuer, including, for instance, debt securities, convertible securities or new classes of equity securities. If so, should the proposed system nevertheless be limited to offerings of securities that are, when sold, listed or quoted on a designated offshore securities market upon completion of the offering?

As proposed, Rule 801 and Form F–11 would not be available for securities issued by an investment company that is registered, or required to be registered, under the Investment Company Act.[51] A foreign issuer that is able to make a public offering of its securities in the United States in reliance on Rule 6c–9 under the Investment Company Act or pursuant to an individual exemptive order under that Act would not be disqualified from using proposed Rule 801 or proposed Form F–11 to make a rights offering in the United States.[52] These issuers are authorized to publicly offer their own securities in the United States without registering under the Investment Company Act, and a rights offering in reliance on proposed Rule 801 or registered on proposed Form F–11 would not present any Investment Company Act concerns. Comment is requested as to whether this approach regarding investment companies is appropriate.

4. Eligibility of Transaction

The system being proposed today is available to rights offerings of equity securities [53] made on a pro rata basis [54] to existing U.S. holders of securities of the same class, including holders of ADRs evidencing such securities.[55] The Commission requests comment as to whether the scope of proposed Rule 801 and Form F–11 should be extended to cover securities offerings in connection with dividend or interest reinvestment plans or offerings of script dividends.[56]

Proposed Rule 801 and Form F–11 would require that the terms and conditions of the offer extended to securityholders that are U.S. holders be not less favorable than the terms and conditions of the offer extended to any other offeree. U.S. holders, for purposes of the proposed system, are persons for whom U.S. addresses appear on the records of the issuer or its agents, including depositaries for sponsored and unsponsored ADR facilities and transfer agents.[57] The Commission recognizes that offering procedures may have to differ from jurisdiction to jurisdiction to accommodate local customs or regulations. Procedural variations in foreign jurisdictions would not render an offering ineligible so long as such practice would not result in material adverse treatment of U.S. holders.

Proposed Rule 801 and Form F–11 would be available only for all cash transactions and would additionally require that the rights granted to U.S. holders not be transferable except in accordance with Regulation S.[58] The system being proposed today is intended to encourage foreign issuers to extend the opportunity to purchase additional securities to be issued in rights offerings to those U.S. persons who already have made the decision to invest in the company based on information available to them. It is not intended to permit foreign issuers to extend such offerings to new investors in the United States. Accordingly, neither the proposed exemption nor the new registration form would be available to transactions that permit the transfer of rights distributed to U.S. holders, other than pursuant to Regulation S. Transfer of the rights outside the United States in accordance with Regulation S would not disqualify the offering, however, nor is it necessary to impose restrictions on transferability of the equity securities that may be purchased upon exercise of rights. Comment is requested regarding whether the securities purchasable upon exercise of rights granted to U.S. holders should be restricted securities for purposes of Rule 144 under the Securities Act.[59]

B. The Proposed Exemption

The exemption contemplated under proposed Rule 801 is non-exclusive.[60] An issuer making an offering in reliance on the proposed rule may also claim any other available exemption under the Securities Act.

Proposed Rule 801 relates only to the application of section 5 of the Securities Act and has no effect on the anti-fraud, civil liability or other provisions of the federal securities laws or provisions of state law relating to the offer and sale of securities.[61] The exemption is not available to any transaction or chain of transactions that, although in technical compliance with the proposed rule, is part of a plan or scheme to evade the registration obligations of the Securities Act.[62] In such cases, registration under the Securities Act would be required.

Proposed Rule 801 is available for the offer and sale in the United States of foreign equity securities in rights offerings so long as the aggregate offering price of such securities does not exceed $5 million. The proposed Rule

[50] Proposed Rule 801(a) and General Instruction A to proposed Form F–11.

[51] Section 7(d) of the Investment Company Act prohibits a foreign issuer that is an investment company as defined in the Investment Company Act from using jurisdictional means to publicly offer its securities for sale in the United States unless the company receives an exemptive order permitting it to register under the Investment Company Act. A rights offering by a foreign investment company to U.S. investors may constitute a public offering within the meaning of section 7(d).

[52] Rule 6c–9, adopted by the Commission in 1987 (see Investment Company Act Release No. 16093), permits foreign banks and their finance subsidiaries to publicly offer and sell their debt securities and non-voting preferred stock in the United States without registering under the Investment Company Act or obtaining an individual exemptive order. The Commission also has issued a number of individual exemptive orders allowing public offerings in the United States of securities not covered by Rule 6c–9, e.g., equity securities issued by foreign banks and their finance subsidiaries, offerings by foreign insurance companies and their finance subsidiaries, and offerings by foreign bank and insurance holding companies, among others. In August 1990, the Commission proposed amendments to Rule 6c–9 that would expand the rule to include: (1) Equity securities of foreign banks and their finance subsidiaries, (2) all securities of foreign insurance companies and their finance subsidiaries, (3) all securities of foreign bank and insurance holding companies, and (4) all securities of Canadian trust and loan companies. See Investment Company Act Release No. 17682 (Aug. 17, 1990) (55 FR 34569).

[53] See Proposed Rule 801(c)(4) and General Instruction A to proposed Form F–11.

[54] The proposal requires that the rights extended to U.S. holders, as compared with rights extended to other holders of securities of the class being offered, be in proportion to the amount of such securities held by each of them on the record date set for the rights offer (assuming in the case of ADR holders that such holders held the underlying securities directly).

[55] Proposed Rule 801(a) and General Instruction A to proposed Form F–11.

[56] See Rule 405 (17 CFR 230.405) for a definition of a dividend or interest reinvestment plan for purposes of Regulation C under the Securities Act (17 CFR 230.400–494). Offerings of script dividends, common in certain jurisdictions such as the United Kingdom, involve offering shareholders the opportunity to receive additional shares or other securities of the issuer in lieu of receiving cash in connection with a declared dividend payment.

[57] Proposed Rule 801(c)(9) and General Instruction D to proposed Form F–11.

[58] 17 CFR 230.901–904.

[59] 17 CFR 230.144.

[60] See Preliminary Note 5 to proposed Rule 801.

[61] See Preliminary Notes 1, 3 and 4 to proposed Rule 801.

[62] See Preliminary Note 2 to proposed Rule 801.

defines "aggregate offering price" of securities to mean the total gross sales price to be received by the issuer for issuance of the securities upon exercise of the related rights, assuming that all such rights were exercised. For purposes of calculating the $5 million, only the securities issuable upon exercise of rights granted to U.S. holders in a specific rights offering being made in reliance on proposed Rule 801 would be considered. Separate rights offerings by the same issuer would be subject to separate $5 million ceilings.

Proposed Rule 801 would not mandate that specific information, including offering circulars, if any, be sent to U.S. holders, except that where any document, notice or other information had been provided to offerees residing in the issuer's home jurisdiction (defined as the issuer's country of incorporation or organization or, if different, the jurisdiction of the primary market for the issuer's equity securities that are listed on a designated offshore securities market), copies of such document, notice or other information must be provided to offerees that are U.S. holders at the same time as, or as soon as practicable after, such document, notice or other information is provided to home jurisdiction offerees. If in lieu of delivering documents to offerees in the home jurisdiction, information regarding the offering is being published or advertised in a home jurisdiction publication, then the issuer may satisfy this information dissemination requirement by publishing an advertisement of the offering in an English language publication of general circulation in the United States,[63] or by delivering written copies of the publication or advertisement to offerees that are U.S. holders. In addition, if any such document, notice or other information delivered or disseminated to home jurisdiction offerees, including any offering circular or advertisement, is not in English, then a translation or a summary in English shall be provided to U.S. holders. Comment is sought regarding the appropriateness of permitting issuers to satisfy the information dissemination requirement by publication in U.S. newspapers.

C. Registration on Proposed Form F–11

Form F–11, like Form F–7 under the Canadian MJDS, would permit an eligible foreign private issuer to register equity securities being offered or sold in the United States in connection with specified rights offerings, using documents prepared according to the disclosure requirements of the issuer's home jurisdiction regulatory scheme.[64]

Proposed Form F–11 is essentially a "wrap-around" form to be used for the registration in the United States of securities to be issued in rights offerings. The proposed Form itself provides for, among other things, disclosure of the issuer's name and address and that of its agent for service in the United States, and includes the foreign circular and a list of the exhibits filed with the Commission, including documents that have been incorporated by reference into the prospectus or offering circular. The proposed Form also requires that the issuer add to the prospectus or offering circular distributed to U.S. holders, to the extent applicable, certain legends advising them that the investment may have tax consequences in the foreign jurisdiction, that U.S. holders may have to pursue legal remedies in a foreign jurisdiction, and that financial statements included in the U.S. registration statement have been prepared in accordance with foreign generally accepted accounting principles, were audited in accordance with foreign auditing standards and that auditor independence was governed by foreign requirements.

The proposal distinguishes between the documents required to be delivered or disseminated to U.S. holders and the documents required to be included in the proposed Form F–11 being filed with the Commission to register the securities. The issuer would provide U.S. holders with the same information (appropriately legended as specified) as that delivered or disseminated abroad in the issuer's home jurisdiction, except that if the materials delivered or disseminated to home jurisdiction offerees are not in English, then U.S. holders must be provided with English translations or summaries of such information.

In accordance with section 5(b) of the Securities Act, the foreign issuer is required to deliver a prospectus to U.S. holders.[65] For purposes of section 5(b), the prospectus for a rights offering registered on proposed Form F–11 would consist of the entire disclosure document or documents used to offer the rights and underlying securities to offerees in the home jurisdiction, including stock exchanges, require the issuer to deliver to offerees in its home jurisdiction. The Commission understands that every securities market currently named as a designated offshore securities market under Regulation S and/or the jurisdiction in which each such market is located imposes a prospectus delivery requirement for equity offerings. Comment is requested regarding whether this is the case and whether market practice in any such jurisdiction or market would make satisfaction of the U.S. prospectus delivery requirement difficult or impractical.

Information that is permitted in the issuer's home jurisdiction to be incorporated by reference in the prospectus would not be required to be distributed to U.S. holders, unless delivery is otherwise required by the issuer's home jurisdiction, but information so incorporated into the prospectus that forms part of the U.S. registration statement must be filed as exhibits to the registration statement on proposed Form F–11. Any document already filed with the Commission under the Exchange Act, or furnished to the Commission pursuant to Rule 12g3–2(b), may be incorporated by reference into proposed Form F–11 and, accordingly, need not be physically filed as separate exhibits to the Form.[66] Incorporated information would become part of the registration statement and would be deemed filed for liability purposes.[67]

In the United States, if any portion of a report or an opinion of an expert, including any auditor or engineer, or counsel is quoted or summarized in a registration statement filed under the Securities Act, or if an expert is named in the registration statement as having prepared or certified a report or a valuation, the written consent of the expert or counsel, expressly consenting to such quotation or summarization or to being so named, must be filed as an exhibit to the registration statement. Form F–11, as proposed today, would not require the filing of such consents of experts or counsel, except in the rare

[63] Proposed Rule 801 would adopt the definition of the phrase "publication with a general circulation in the United States" contained in Rule 902(k) of Regulation S. See Rule 801(c)(8).

[64] Like Form F–7 as approved by the Commission, securities that could have been purchased by U.S. holders pursuant to rights granted to them but were not purchased by these holders are deemed not to be registered on proposed Form F–11. The rights themselves generally are not required to be registered under the Securities Act. *Cf.* Securities Act Release No. 929 (July 29, 1936) [11 FR 10957], but they may be concurrently registered on proposed Form F–11 by the issuer.

[65] 15 U.S.C. 77e(b).

[66] Rule 24 of the Commission's Rules of Practice (17 CFR 201.24) is being amended in connection with the Canadian MJDS to permit the incorporation by reference of materials submitted to the Commission, including materials submitted under Rule 12g3–2(b), in addition to materials previously filed with the Commission.

[67] See n. 72, *infra*.

instance where the expert's or counsel's materials were prepared or certified solely for use in the registration statement on proposed Form F–11 or the prospectus being delivered to the U.S. holders.[68] The Commission requests comment on whether it is appropriate to excuse experts and counsel from having to consent to the use of their names or to the quotation or summary of their reports or opinions in registration statements filed under cover of proposed Form F–11. Comment is also requested on whether requiring the filing of a consent by experts in connection with proposed Form F–11 registration would be impracticable or involve undue hardship on the person filing the registration statement within the meaning of section 7 of the Securities Act. In this regard, commenters should focus on whether the consent requirement is common practice among foreign registration and listing schemes such that a consent would be obtainable in connection with a Form F–11 filing.

Under the proposal, the properly completed registration statement on proposed Form F–11 would become effective upon filing and would not be subject to prior review by the Commission's staff.[69] Automatic effectiveness of the registration statement is intended to give the issuer maximum flexibility to coordinate the timing of the U.S. portion of the offering with the time schedule of the offshore portion of the offering.

All documents filed with the Commission would be subject to the civil liability and general antifraud provisions of the U.S. securities laws applicable to a registration statement filed under the Securities Act. [70] In addition, such documents would be in the Commission's public files and, therefore, would be subject to public inspection.

As proposed, Form F–11 incorporates in its entirety the disclosure requirements under applicable laws of the issuer's home jurisdiction, as construed under the laws of that jurisdiction. Other than requiring the inclusion of specified legends, the provision of English translations or summaries and the filing of certain exhibits, no disclosure requirements would be defined by U.S. rules and regulations. Like Form F–7 approved under Canadian MJDS, proposed Form F–11 provides that the provisions of Regulation C shall not apply to rights offers registered on the proposed Form, unless specifically referred to in the proposed Form. Proposed Form F–11 would specifically preserve the application of Rules 408 and 415, and address incorporation by reference, English language requirements, and other matters covered by Regulation C.[71] In addition, Regulation C is itself being amended to address effective date, delaying amendments and consent requirements with respect to Form F–11 filings. Comment is requested whether, unlike Canadian MJDS which relied upon Canadian registration procedures and concepts, additional provisions of Regulation C should apply to rights offers registered on Form F–11, which is not based upon specific foreign regulatory schemes. Accordingly, financial statements may be prepared in accordance with foreign generally accepted accounting principles and be audited under the auditing standards of the foreign jurisdiction, by auditors subject to foreign auditor independence requirements.

Commenters to Canadian MJDS and several recent Commission releases have expressed the concern that registration statements based on foreign disclosure requirements may expose registrants to liabilities even if foreign disclosure requirements and standards have been adhered to, simply because certain types of information typically included in U.S. disclosure documents are permitted by foreign rules and regulations to be omitted from foreign disclosure documents. The Commission stated in the Canadian MJDS Reproposing Release that in adopting Canadian MJDS, the Commission would be adopting as its own requirements the disclosure requirements of the applicable Canadian regulatory scheme with respect to the registration statements filed on Canadian MJDS forms. [72] The same principles would apply to the rules and forms proposed today regarding offering materials disseminated to U.S. holders or filed with the Commission on proposed Form F–11. Accordingly, good faith compliance with the disclosure requirements of the applicable foreign jurisdiction, as construed by the foreign authorities, would constitute compliance with the applicable U.S. federal securities disclosure requirements, even if such compliance were to result in the omission of information which might otherwise have been required as a line item to be included in registration statements filed by U.S. issuers on the Commission's other registration forms.

The Commission requests comment on the appropriateness of this total incorporation of and reliance on foreign disclosure requirements and standards, and solicits comment as to whether the Commission should impose any minimum disclosure standards.

D. Exchange Act Reporting

As a result of new Rule 12h–5 being proposed under the Exchange Act today,[73] foreign issuers who do not otherwise have a reporting obligation under the Exchange Act will not, solely as a result of having filed a registration statement on proposed Form F–11 that has been declared effective, acquire such a reporting obligation. These issuers, accordingly, would be able to retain their exempted status under Rule 12g3–2(b) following a filing on proposed Form F–11.[74] Proposed Rule 12h–5 is based on the premise that incurring a continuous reporting obligation under the Exchange Act operates as a disincentive to foreign issuers not otherwise subject to such reporting obligations, discouraging them from extending rights offers to U.S. investors.

Comment is requested regarding the advisability of exempting such issuers from Exchange Act reporting obligations that arise under section 15(d) of the Exchange Act.

---

[68] See section 7 of the Securities Act (15 U.S.C. 77g) and proposed Rule 441 under the Securities Act. In most cases the report, certification or opinion of an expert or counsel that is named, quoted or summarized in the U.S. registration statement would have been prepared in connection with the offshore portion of the offering, or incorporated from reports or opinions that have been prepared in the ordinary course of business or for foreign periodic reports or prior foreign registration statements. In such cases, filing of consents of experts or counsel would not be required.

[69] See proposed Rule 468 and proposed amendments to Rule 464 under the Securities Act (17 CFR 230.468 and 230.464).

[70] For instance, sections 11 and 12(2) of the Securities Act (15 U.S.C. 77k and 77*l*(2); sections 10(b) and 15(c)(1) of the Exchange Act (15 U.S.C. 78j(b) and 78*o*(c)(1) and Rules 10b–5 and 15c1–2 (17 CFR 240.10b–5 and 240.15c1–2).

[71] See Rule 400 under Regulation C (17 CFR 230.400), providing that the provisions of that regulation shall not control where the provisions of a form address the same subject matter.

[72] See Canadian MJDS Reproposing Release, *supra* at 46301.

[73] Proposed Rule 12h–5 (17 CFR 240.12h–5) would exempt issuers from the duty under section 15(d) of the Exchange Act (15 U.S.C. § 78*o*(d)) to file periodic reports under the Exchange Act with respect to securities being registered on proposed Form F–11.

[74] Although Rule 12g3–2(d)(1) (17 CFR 240.12g3–2(d)(1)) precludes an issuer which has or has had, during the previous 18 months, a section 15(d) reporting obligation from relying on the exemption under Rule 12g3–2(b), issuers that file registration statements on proposed Form F–11 would not, by operation of proposed Rule 12h–5, incur any section 15(d) reporting obligation solely as a result of having filed a registration statement on proposed Form F–11 that has been declared effective.

E. State Securities Regulations

Issuers selling securities in the United States must comply with the securities (or "blue sky") laws of the states, which generally require registration with state authorities of offerings made to state residents. The securities laws of many states, however, contain a provision, patterned after Section 402(b)(11) of the Uniform Securities Act, [75] exempting from registration security offerings to existing securityholders of the issuer if no commission or other remuneration, other than a standby commission (*i.e.*, a payment to an underwriter for its commitment to purchase securities not purchased by the security holders) is paid or given directly or indirectly for soliciting any security holder in the state. [76] Some states permit the payment of commissions other than standby commissions on the condition that state securities regulators receive advance notification of the offering, specifying the terms of the offer. [77] Compensation paid in the offshore portion of a rights offering would not necessarily disqualify the offer from reliance on the exemption, however. Thus, there are likely to be rights offerings registered on proposed Form F–11 that would be exempt in these states.

There may be additional exemptions available to a particular rights offer. For example, in many states, offerings of securities listed on the NYSE or AMEX or traded on the NASDAQ National Market System are exempt from registration.

Many states have adopted uniform practice guidelines and procedures proposed by the North American Securities Administrators Association ("NASAA"). [78] In April 1989, NASAA adopted a statement on Internationalization of the Securities Markets, urging its members to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." NASAA has been reviewing the proposed exemption and registration form to determine what actions, if any, are necessary and appropriate for the states to adopt and implement to accommodate these offerings.

IV. Amendments to Form F–3; Relationship of Proposed Form F–11 and Other Registration Forms

A. Amendments to Form F–3

Securities Act registration Form F–3, which permits full incorporation by reference to Exchange Act reports, is available for registration of securities offered in connection with certain rights offerings, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants. To be eligible to use Form F–3, a foreign private issuer, among other things, must have been subject to the requirements of Section 12 or 15(d) of the Exchange Act and have filed all information required to be filed under that Act for at least 36 months immediately prior to filing on Form F–3. [79] In addition, such issuer must also meet a $300 million public float test, unless the securities being registered are non-convertible investment grade securities. [80]

The Commission is proposing today to amend Form F–3 to eliminate the 36-month reporting history requirement and the $300 million public float requirement for transactions described in paragraph b.4. of Transaction Requirements under General Instruction I.B. to Form F–3. [81] In addition, General Instructions III to Form F–3 is proposed to be amended to provide for immediate effectiveness of registration statements filed on Form F–3 relating to these transactions. [82]

Concurrently with proposing amendments to Form F–3, the Commission is proposing technical amendments to Form F–2 to delete paragraph E of General Instruction I to Form F–2, [83] which exempts registrants seeking to register securities being offered in connection with rights offerings, dividend or interest reinvestment plans, conversions of convertible securities and exercise of warrants, from the 36-month Exchange Act reporting history requirement usually applicable to Form F–2 registrants.

B. Relationship With Other Registration Forms

Proposed Form F–11 is based on Form F–7, the registration form for rights offerings under the Canadian MJDS. Like Form F–7, proposed Form F–11 may only be used for registering securities offered or sold in all-cash rights offers that prohibit the transfer of the rights in the United States. While Form F–7, unlike proposed Form F–11, may be used to register offerings of securities of any class and the two Forms impose different issuer eligibility conditions, [84]

---

[75] Section 402(b)(11) of the Uniform Securities Act provides an exemption from registration and sales and advertising literature filing requirements for "any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the [Administrator] does not by order disallow the exemption within the next five full business days."

[76] Forty-three states have some type of exemption for offers and sales to existing securityholders. The District of Columbia has no securities registration requirements.

[77] The exact form of exemptions for offers and sales to existing securityholders differ considerably among the states. One state permits the payment of other than standby commissions to broker-dealers which are registered or exempt from registration under that state's laws. Twenty-five states permit the payment of other than standby commissions if a notice is filed and the exemption is not disallowed. One state permits the payment of other than standby commissions if affirmatively approved by the state. Ten states prohibit completely the payment of other than standby commissions but do not require a notice filing. Six states prohibit completely the payment of other than standby commissions and require the filing of a notice.

[78] NASAA is an association comprised of all state and provincial securities regulators in the United States and Canada.

[79] See General Instruction I.A.2. to Form F–3.

[80] See General Instruction I.A.4. to Form F–3. To meet the requisite public float test, the aggregate market value worldwide of the voting stock of the issuer held by non-affiliates must be the equivalent of $300 million or more. See also Instructions to General Instruction I.A.4. to Form F–3.

[81] Transactions described in paragraph 4 of the Transaction Requirements to Form F–3 include transactions in which the only securities to be registered are those being offered (a) upon the exercise of outstanding rights granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach; (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to paragraph 4 of the Transaction Requirements of Form F–3, however. See General Instruction I.B.4. to Form F–3.

[82] See General Instruction III to Form F–3. In addition to the changes being proposed today, the Commission is proposing today in a companion release published elsewhere in this issue to amend Rule 3–19 under Regulation S–X relating to the maximum age of financial statements to be included in registration statements filed on Form F–3. As a result of the amendments to Rule 3–19, if such amendments are adopted, foreign issuers that do not prepare interim financial statements on a quarterly basis would no longer be precluded from filing registration statements on Form F–3 during certain "black out" periods.

[83] See General Instruction I.E. to Form F–2.

[84] For instance, Form F–7 requires issuers to have maintained a three-year reporting history with Canadian securities regulators as well as a one-year listing history with The Montreal Stock Exchange, The Toronto Stock Exchange or the Senior Board of The Vancouver Stock Exchange, all of which are designated offshore securities markets under Regulation S. By contrast, proposed Form F–11 would allow all foreign private issuers that are Exchange Act reporting issuers at the time of filing to register equity securities on that form regardless of their foreign reporting and listing histories. In addition, with respect to nonreporting issuers, proposed Form F–11 would permit those that have either a three-year listing history with a designated offshore securities market or, if they do not have three-year listing history, a $75 million minim· m public float to qualify.

Canadian issuers that meet the eligibility requirements and other conditions for both forms will have the option of registering rights offerings of equity securities on either form. It is anticipated that upon adoption of proposed Form F–11, it may be merged and consolidated with Form F–7 as approved under the Canadian MJDS.

In addition, foreign issuers, including Canadian issuers, that are reporting issuers under the Exchange Act may be eligible to register securities to be issued in connection with rights offers on Form F–3, as proposed to be amended hereby.[85] Foreign issuers that meet the eligibility conditions for registration on both Form F–11 and the amended Form F–3, therefore, would have the option of registering on either form.

V. Exemptions Under Rules 10b–6, 10b–7, and 10b–8 Under the Exchange Act

Rule 10b–6 under the Exchange Act generally prohibits persons participating in a distribution of securities ("distribution participants") and their "affiliated purchasers" [86] from, directly or indirectly, bidding for or purchasing the security being distributed, any security of the same class and series, or any right to purchase such security ("related securities") during the distribution.[87] Rule 10b–7 regulates stabilization transactions in connection with an offering of securities. Rule 10b–8 governs distributions that are made through rights offerings.

These anti-manipulation rules have played an important role in protecting U.S. markets from potentially manipulative conduct during a distribution. Specifically, Rule 10b–6 is designed to protect the market for the security in distribution as an independent pricing mechanism, free from any influence on the security's price that may result from bids or purchases of the distribution security or related securities by distribution participants or other persons having a financial or other stake in the success of the distribution. Rule 10b–8 is designed to facilitate distributions through rights by permitting distribution participants to bid for and purchase the rights, but limits the prices at which bids and purchases of rights, and offers and sales of the underlying security, may be made.

Foreign practices and methods of distributing securities, including distributions through rights offerings, often differ from those utilized in the United States. The growing internationalization of the securities markets has highlighted differences between U.S. and foreign provisions governing market activity during offerings of securities. The Commission has taken a number of steps to permit non-U.S. distribution participants to continue certain customary market activities in foreign jurisdictions, subject to conditions designed to protect against manipulative effects in the U.S. market.[88]

Flexible application of the above anti-manipulation rules appears to be necessary and appropriate to encourage foreign issuers to permit U.S. shareholders to participate fully in rights offerings made pursuant to proposed Rule 801 or Form F–11. At the same time, the importance of maintaining the integrity of the U.S. markets requires that any exemptions should be limited to circumstances where the characteristics of the offering indicate that the manipulation concerns expressed in Rules 10b–6, 10b–7, and 10b–8 are sufficiently attenuated. The proposed exemptions described below would have no effect on the continued application of the general antifraud and anti-manipulation provisions of the securities laws. [89]

It is likely that many of the rights offerings using proposed Rule 801 or Form F–11 will not be "distributions" as defined in Rule 10b–6,[90] and the persons participating in such offerings will not be affected by the rule or the need to consider whether the proposed exemptions are available. Nevertheless, the Commission believes that it is appropriate to exercise its exemptive authority under Rules 10b–6(h), 10b–7(o), and 10b–8(f) to propose a complete exemption for rights offerings pursuant to proposed Rule 801 on the presumption that such offerings of foreign securities are unlikely to raise significant manipulative concerns.

In the context of distributions through rights pursuant to proposed Form F–11, the Commission is proposing to issue an order that would exempt distribution participants from Rules 10b–6, 10b–7, and 10b–8, subject to the following conditions: (1) The issuer of the foreign securities in distribution has voting stock with an aggregate market value of at least $150 million held worldwide by persons that are not affiliates of the issuer; (2) in required proposed Form F–11 legends, [91] the registrant discloses, where such is the case, the possibility of, or the intent to make, bids or purchases outside the United States as permitted by the applicable laws and regulations of the governing foreign jurisdictions; (3) the registrant discloses in the United States information regarding such purchases to the extent such disclosure is made in a foreign jurisdiction; (4) any bids or purchases of the security by distribution participants are made on a "designated offshore securities market," as defined in Rule 902 under the Securities Act; [92] (5) no bids or purchases of the rights or the underlying securities are effected in the United States; and (6) at the time that the rights offering commences, the exercise price of the rights represents a discount of at least ten percent from the then current market price of the securities underlying the rights. A distribution participant would also be permitted to purchase rights to offset a short position in the security established in connection with the distribution. [93]

The Commission seeks commenters' views on the proposed exemptions. Specifically, should the issuer qualification of $150 million in voting securities be changed to equity with a "public float" [94] of $150 million; $75 million? With regard to the qualifying markets for bids and purchases, would it be more appropriate to limit the availability of the exemptions to purchases on "specified foreign securities markets," as defined in proposed Rule 3b–10 under the Exchange Act,[95] or markets located in countries with which the Commission has an MOU or other comparable information sharing agreement? [96]

---

[85] See Section IV.A., *supra*.

[86] The term "affiliated purchaser" is defined in Rule 10b–6(c)(6).

[87] The term "distribution" is defined in Rule 10b–6(c)(5) as an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. This definition is designed to apply the prohibitions of the rule to those situations when there would be an incentive to manipulate the security's price in order to facilitate the distribution. See n 90, *infra*.

[88] See, e.g., Letter re The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (Sept. 29, 1987); and Securities Act Release No. 6840 (July 24, 1989) [54 FR 32226], proposing Canadian MJDS.

[89] See n. 61 *supra*, and accompanying text.

[90] See n. 87, *supra*. In determining whether a distribution is present, only the portion of the securities offered in the U.S. would be considered. However, for purposes of Rule 10b–6, the offeror would have to take into account all securities concurrently offered by the offeror in the United States, including securities offered pursuant to exemptions from Securities Act registration.

[91] See part I, Item 2 of Form F–11.

[92] See 17 CFR 230.902(a).

[93] See, *e.g.*, Rule 10b–8(d), which permits purchases of rights, subject to certain conditions, to cover sales of the underlying security by the distributor. Moreover, the Commission would consider requests for exemptive relief on a case-by-case basis for transactions that do not satisfy the criteria of the proposed exemptions.

[94] See Instruction 4 to proposed Form F–11.

[95] See Exchange Act Release No. 28733 (January 3, 1991) (56 FR 820).

[96] See n. 47 *supra* and accompanying text.

Should this alternative limitation depend on the percentage of the offeror's securities held in the U.S.? The Commission believes that where the exercise price of the rights has been set at a significant bona fide discount from the market price for the underlying shares, distribution participants are less likely to have an incentive to effect transactions that could artificially raise the price of the underlying shares and thereby facilitate the distribution through securityholders' exercise of the rights.[97] The Commission requests comment on this view, and whether the ten percent discount level is appropriate in light of current rights offering practices. Should the discount level be higher or lower (*e.g.*, five percent, eight percent, 15 percent)? Should the level of any required discount be tied to the characteristics of the primary market for the offeror's securities or the percentage of the issuer's securities held in the U.S. (*e.g.*, 10 percent, 25 percent)? Finally, comment is requested concerning the role played by issuers and their affiliated purchasers in foreign rights offerings and whether it is appropriate to extend the proposed exemptions to them.[98]

VI. Request for Comments

Any interested person wishing to submit written comments on proposed Rule 801 and Form F–11, the proposed amendments to Form F–3, exemptive relief from Rules 10b–6, 10b–7 or 10b–8 or the treatment of rights offers by foreign private issuers in general, is requested to do so. Comment is also solicited regarding whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comment on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.

VII. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 801 and Form F–11, and with the proposed amendments to Form F–3, the Commission requests commenters to provide views and data as to the costs and benefits associated with cross-border rights offers by foreign private issuers under current law as compared to such costs and benefits under the proposed Rule and Form, and proposed amendments to Form F–3. The Commission is not aware of any additional costs that would result from adoption of the proposed Rule and Form, as any eligible foreign private issuer would be able to avoid entirely expenses associated with the preparation and filing of a registration statement with the Commission in cases where the U.S. portion of the offering meets the requirements of Rule 801 and, in other cases, avoid some of the expenses resulting from having to prepare and file substantially different disclosure documents in the United States and in the issuer's home jurisdiction. Proposed amendments to Form F–3 would make that Form available for registration of rights offerings and other specified transactions to a broader class of foreign issuers. It is expected that foreign private issuers would thus be more willing to include the U.S. holders of their securities in rights offers and that U.S. investors in foreign securities will, as a group, benefit from the adoption of the proposed rule and Form, and proposed amendments to Form F–3. U.S. issuers would be unaffected by such changes.

VIII. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act,[99] the Chairman of the Commission has certified that adoption of the proposed rules and Forms, and proposed revisions to existing Rules and Forms, will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix B.

IX. Statutory Basis and Text of Proposed Rule and Form

The new rules and Forms and revisions to existing rules and Forms are being proposed pursuant to sections 3, 7, 8, 10 and 19 of the Securities Act,[100] and sections 12 and 23 of the Exchange Act.[101]

List of Subjects in 17 CFR Parts 230, 239 and 240

Reporting and recordkeeping requirements, securities.

X. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

2. By revising paragraph (a) of § 230.174 to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the Act.

* * * * *

(a) No prospectus need be delivered if the registration statement is on Forms F–6 or F–11 (§ § 239.36 or 42 of this chapter).

* * * * *

3. By adding § 230.441 to read as follows:

§ 230.441 Exemption from the requirement to provide consents for registration statements on Form F–11.

The written consent of an expert pursuant to section 7 of the Act shall not be required with respect to a registration statement on Form F–11 (17 CFR 239.43 of this chapter), except with respect to a certification, report or valuation prepared solely in connection with such registration statement.

4. By revising § 230.464 to read as follows:

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S–8 and Form F–11, and on certain Forms S–3, S–4, F–3, and F–4.

Provided. That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S–8 (§ 239.16b of this chapter) or Form F–11 (§ 239.43 of this chapter); or on Form S–3 (§ 239.13 of this chapter) for a registration statement relating to a

---

[97] See Letter re Attwoods PLC (June 26, 1990) ("Attwoods Letter") (exemptions from Rules 10b–6, 10b–7 and 10b–8 to permit an underwriter that was a market maker on the ISE to engage in market making during a cross-border rights offering of Attwoods ordinary shares. The rights exercise price was set at a discount of 18 percent from the market price of the ordinary shares as of commencement of the rights offering. Other important considerations in the Attwoods Letter were: the existence of a comprehensive monitoring and surveillance program at the ISE, and U.K. provisions that prohibit fraudulent and manipulative activity; and the Memorandum of Understanding ("MOU") between the Commission and the U.K. Department of Trade and Industry). See also Letter re Securities Industry Association (Apr. 25, 1991) ("SIA Letter") (application of Rules 10b–6, 10b–7, and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities).

[98] Limiting the exemptions to persons other than the issuer and its affiliates would be consistent with prior Commission actions. See *e.g.*, SIA Letter.

[99] 5 U.S.C. 605(b).

[100] 15 U.S.C. 77, 77g, 77h, 77j and 77s.

[101] 15 U.S.C. 78 and 78w.

dividend or interest reinvestment plan; or on Form F–3 (§ 239.33 of this chapter) for a registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or in the case of a registration statement on Form S–4 (§ 239.25 of this chapter) that there is continued compliance with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form:

(a) The post-effective amendment shall become effective upon filing with the Commission; and

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S–8 or Form F–11 registration statement; or a Form S–3 registration statement relating to a dividend or interest reinvestment plan; or a Form F–3 registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or a Form S–4 registration statement complying with General Instruction G of that Form or a Form F–4 registration statement complying with General Instruction F of that Form and which has been amended to include or incorporate new full year financial statements or to comply with the provisions of section 10(a)(3) of the Act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

5. By adding new § 230.468 to read as follows:

§ 230.468 Effectiveness of registration statements made on Form F–11 and on certain Forms F–3.

A registration statement on Form F–11 (§ 239.43 of this chapter) or on Form F–3 (§ 239.33 of this chapter) relating to offerings described in paragraph 4 of General Instruction I.B. of that Form shall become effective upon filing with the Commission.

6. By revising paragraph (d) of § 230.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form F–11 or Form S–8 (§ 239.16b or § 239.43 of this chapter); on Form S–3 (§ 239.13 of this chapter) relating to a dividend or interest reinvestment plan; on Form F–3 (§ 239.33 of this chapter) relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

7. By adding new § 230.801 to read as follows:

§ 230.801 Exemption for limited offers and sales of securities by a foreign private issuer to its security holders.

Preliminary Notes

1. Section 230.801 relates solely to the application of section 5 of the Securities Act of 1933 (the "Act") (15 U.S.C. 77e) and not to the applicability of the antifraud, civil liability or other provisions of the federal securities laws.

2. In view of the objectives of § 230.801 and the policies underlying the Act, § 230.801 is not available with respect to any transaction or series of transactions that, although in technical compliance with this rule, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in this § 230.801 obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78 *et seq.*) or other provisions of the federal securities laws whenever such requirements are applicable.

4. Nothing in this § 230.801 obviates the need to comply with any applicable state law relating to the offer and sale of securities.

5. Attempted compliance with § 230.801 does not act as an exclusive election; a person making an offer or sale of securities in reliance on § 230.801 may also claim the availability of any other applicable exemption from the registration requirements of the Act.

6. Section 230.801 provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves. Securities of foreign private issuers, whether or not acquired in a transaction made in reliance on § 230.801, may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. The provisions of this § 230.801 shall not apply to offers and sales of securities issued by investment companies registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a–1 *et seq.*).

8. Offers and sales made outside the United States will not affect, or be affected by, contemporaneous rights offer made in compliance with § 230.801 and will not be included in calculating the aggregate offering price of securities offered and sold in compliance with this § 230.801. A transaction made in compliance with this § 230.801 will not be integrated with registered domestic offerings or domestic offerings that satisfy the requirements for an exemption from registration under the Act, including an exemption under other rules adopted pursuant to section 3(b) of the Act, even if undertaken contemporaneously. No adjustment to the aggregate offering price shall be made for other offerings by an issuer made in reliance upon an exemption under other rules adopted pursuant to section 3(b) of the Act.

(a) *Exemption.* Offers and sales of equity securities issuable upon the exercise of rights to purchase or subscribe for such securities granted by the issuer to the existing holders of securities of such class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of securities that evidence such securities, that such holders owned the underlying securities directly) shall be exempt from the provisions of section 5 of the Act by virtue of section 3(b) of the Act, provided that the conditions specified in paragraph (b) of this section are satisfied.

(b) *Conditions to be met*— (1) *Eligibility of issuer.* (i) As of the commencement date of the subject offering, the issuer:

(A) Shall be a foreign private issuer; and

(B) Shall either:

(*1*) Be a Reporting Issuer; or

(*2*) Be exempt from the requirements of section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b) thereunder, have at least one class of its equity securities listed or quoted on one or more designated offshore securities markets and be currently in compliance with the obligations arising from such listing or quotation, and either:

(*i*) Have maintained such listing or quotation for the consecutive 36-month period immediately preceding the commencement date of the offering to be made in reliance on this § 230.801; or

(*ii*) Have a public float of not less than $75 million.

(ii) If the issuer is a successor issuer existing after a merger, a spinoff, an arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the issuer shall be deemed to meet the 36-month listing requirement of paragraph (b)(1)(i)(C)(*2*)(*i*) of this section if:

(A) The time the successor issuer has been listed or quoted on one of such designated offshore securities markets, when added separately to the time each predecessor had been so listed or quoted at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That any predecessor need not be considered for the purposes of the listing history calculation if the listing

histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor issuer as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor issuer in each case satisfies such 36-month listing requirement; and

(B) The successor issuer has had a class of its equity securities listed or quoted on at least one of such designated offshore securities markets since the business combination and currently is in compliance with the obligations arising from such listing.

(2) *Eligibility of securities.* The securities to be offered or sold in reliance on this § 230.801 shall be equity securities of the same class as that held by U.S. holders.

(3) *Manner of Rights Offering.* (i) Any offer or sale of securities in reliance on this § 230.801 shall be:

(A) For cash only;

(B) Offered and sold upon the exercise of rights granted to offerees that are U.S. holders upon terms and conditions that are not less favorable than those extended to any other holder of securities of the class being offered; and

(C) Made pursuant to the exercise of rights to purchase or subscribe for such securities that:

(*1*) Were granted by the issuer to the existing holders of securities of the same class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of holders of securities that evidence such securities, that such holders owned the underlying securities directly); and

(*2*) When issued to offerees that are U.S. holders, are by their terms not transferable except in accordance with Regulation S (§§ 230.901–904 of this chapter).

(ii) All offerees that are U.S. holders shall be provided with the same notices, documents or other information as that provided to the offerees in the home jurisdiction of the issuer at the same time that, or as soon as practicable after, such notices, documents or other information are made available to the home jurisdiction offerees. If in lieu of delivering notices, documents, or other information to offerees in the home jurisdiction, information regarding the offering is being published or advertised in a home jurisdiction publication, then the issuer may at its option publish substantially equivalent information in the English language in a publication of general circulation in the United States or deliver a written copy of the home jurisdiction publication or advertisement to each offeree that is a U.S. holder at the same time that, or as soon as practicable after, the information becomes publicly available in the home jurisdiction of the issuer. If such notice, document or other information is furnished to the home jurisdiction offerees in a language other than English, then an English translation or summary of such notice, document, or other information shall be furnished to offerees that are U.S. holders.

(4) *Aggregate offering price.* The aggregate offering price of securities subject to outstanding offers made to offerees that are U.S. holders in connection with each rights offering made in reliance on this § 230.801 shall not exceed $5,000,000.

(c) *Definitions.* As used in this § 230.801, the following terms shall have the meaning indicated:

(1) *Aggregate offering price* means the total gross sales price to be received by the issuer for issuance of its securities upon exercise of the related rights. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the commencement date of the offering.

(2) The *commencement date* of a rights offer made in reliance on this § 230.801 is the date the securities are first offered to offerees that are U.S. holders.

(3) *Designated offshore securities market* has the meaning specified in Rule 902(a) of Regulation S under the Act (§ 230.902(a) of this chapter).

(4) *Equity security* has the meaning specified in Rule 405 of Regulation D (§ 230.405 of this chapter) but does not include:

(i) Any security convertible, with or without consideration, into an equity security, or carrying any warrant or right to subscribe to or purchase an equity security;

(ii) Any such warrant or right; or

(iii) Any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

(5) *Foreign private issuer* has the meaning specified in Rule 405 of Regulation C (§ 230.405 of this chapter).

(6) *Home jurisdiction.* With respect to any offer or sale of securities made in reliance on this § 230.801, the "home jurisdiction" means the country of the issuer's organization or incorporation, unless the primary market for the issuer's equity securities is in some other country, in which case such country of the primary market for the listed securities shall be deemed the "home jurisdiction." The "primary market" of a class of securities is the single securities market with the largest aggregate trading volume for that class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation or organization.

(7) *Public float* means the market value of the issuer's equity securities listed or quoted on a designated offshore securities market and held by nonaffiliates of the issuer. *Market value* shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the primary market for such shares as of a date within 60 days prior to the commencement. If there is no market for such shares the book value of such shares computed as of the latest practicable date prior to the commencement date shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such shares shall be used. An "affiliate" of an issuer shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year.

(8) *Publication with a general circulation in the United States.* (i) "Publication with a general circulation in the United States" means any publication that:

(A) Is printed primarily for distribution in the United States; or

(B) Has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue.

(ii) Notwithstanding paragraph (c)(8)(i) of this section, only the U.S. edition of any publication printing a separate U.S. edition will be deemed a publication with a general circulation in the United States if:

(A) Such publication, without consideration of its U.S. edition, would not meet the requirements of paragraph (c)(8)(i) (A) or (B) of this section; and

(B) The U.S. edition itself meets the requirements of paragraph (c)(8)(i) of this section.

(9) *Reporting Issuer* means an issuer other than an investment company

registered or required to be registered under the Investment Company Act that:

(i) Has a class of securities registered pursuant to section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and

(ii) Has filed all the materials required to be filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least 12 months immediately preceding the commencement date of the offering being made in reliance upon this § 230.801 (or for such shorter period that the issuer was required to file such material).

(10) *U.S. holder.* With respect to any offer or sale of securities made in reliance on this § 230.801, a "U.S. holder" means any person whose address appears on the records of the issuer or any voting trustee, depositary, share transfer agent or any person acting on behalf of the issuer for such securities, as being located in the United States.

(11) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

§ 239.32 [Amended]

9. By amending § 239.32 by removing paragraph (e) and redesignating paragraphs (f) and (g) as paragraphs (e) and (f).

10. By amending Form F–2 (17 CFR 239.32) by removing paragraph E. of General Instructions I and redesignating paragraphs F. and G. as paragraphs E. and F.

Note: Form F–2 is not codified in the Code of Federal Regulations.

11. By amending § 239.33 by revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(2) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14, or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b)) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in (b)(4) of the Transaction Requirements.

* * * * *

(4) The aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $300 million or more, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in (b)(2) or (b)(4) of the Transaction Requirements.

* * * * *

§ 239.33 [Amended]

12. By amending Form F–3 (17 CFR 239.33) by revising General Instructions I.A.2. and I.A.4. to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. * * *

A. * * *

2. The registrant:

(a) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14, or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and

(b) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in B.4. of the Transaction Requirements.

* * * * *

4. The aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $300 million or more, except that the provisions of this paragraph do not apply if the only securities being registered are to be offered in a transaction of the type described in B.2. or B.4. of the Transaction Requirements.

* * * * *

§ 239.33 [Amended]

13. By amending Form F–3 (17 CFR 239.33) by revising the heading and the first three sentences of General Instruction III to read as follows:

Form F–3

* * * * *

General Instructions

* * * * *

III. Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions of Warrants: Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment

Original registration statements on this Form F–3 solely with respect to securities offered pursuant to transactions of the type described in B.4. of the Transaction Requirements shall become effective automatically upon filing (Rule 456, § 230.456 of this chapter) pursuant to the provisions of section 8(a) of the Act.* * *

* * * * *

14. By adding § 239.43 (Form F–11) to read as follows:

§ 239.43 Form F–11, registration of securities offered by certain foreign private issuers to existing security holders pursuant to rights offerings.

(a) Form F–11 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of equity securities offered or sold for cash upon the exercise of rights to purchase or subscribe for such securities granted by the Registrant to the existing holders of securities of such class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of securities that evidence such securities, that such holders owned the underlying securities directly).

Instruction

For purposes of this Form, the term *equity security* has the meaning specified in Rule 405 of Regulation C (§ 230.405 of this chapter) but does not include: (1) Any security convertible, with or without consideration, into an equity security, or carrying any

warrant or right to subscribe to or purchase an equity security; (2) any such warrant or right; or (3) any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

(b) Form F–11 is available to any Registrant that is a foreign private issuer and that either:

(1) Is a Reporting Issuer, or

(2) Is exempt from the requirements of section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") pursuant to Rule 12g3–2(b) thereunder, has a class of its equity securities listed or quoted on a designated offshore securities market and currently is in compliance with the obligations arising from such listing or quotation and either:

(i) Has maintained such listing or quotation for the consecutive 36-month period immediately preceding the commencement date of the offering being registered on this Form; or

(ii) Has a public float of not less than $75 million.

Instructions

1. For purposes of this Form, *foreign private issuer* shall be construed in accordance with Rule 405 of Regulation C (§ 230.405 of this chapter).

2. For purposes of this Form, *Reporting Issuer* means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act") that: (i) Has a class of securities registered pursuant to section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and (ii) has filed all the materials required to be filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or for such shorter period that the issuer was required to file such material).

3. For purposes of this Form, the term *designated offshore securities market* shall be construed in accordance with Rule 902(a) of Regulation S under the Securities Act.

4. For purposes of this Form, *public float* shall be the market value of the registrant's equity securities listed or quoted on a designated offshore securities market and held by nonaffiliates of the issuer. "Market value" shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for such shares, the book value of such shares computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such shares is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such shares shall be used. An *affiliate* of an issuer shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year.

5. For purposes of this Form, the *commencement date* of a rights offer is the date the registration statement is filed with the Commission.

(c) If the Registrant is a successor Registrant existing after a merger, a spinoff, an arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the 36-month listing requirement of paragraph (b)(2)(i) of this § 239.43 if:

(1) The time the successor Registrant has been listed or quoted on one of such designated offshore securities markets, when added separately to the time each predecessor had been so listed or quoted at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfies such 36-month listing requirement; and

(2) The successor Registrant has had a class of its equity securities listed or quoted on at least one of such designated offshore securities markets since the business combination and currently is in compliance with the obligations arising from such listing.

(d) The rights in connection with the transaction granted to offerees that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. That the securities offered or sold upon exercise of rights to securityholders that are U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction

For purposes of this Form, the term *U.S. holder* shall mean any person whose address appears on the records of the registrant or any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the Registrant for such securities, as being located in the United States. *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(e) This Form may not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(f) The Commission has granted exemptions from Rules 10b–6, 10b–7, and 10b–8 for certain rights offerings made in reliance on Form F–11 that constitute distributions in the United States. See Exchange Act Release No.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

15. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78q, 79t, 80a–29, 80a–37, unless otherwise noted.

16. By adding § 240.12h–5 to read as follows:

§ 240.12h–5 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F–11 (17 CFR 230.43).

Dated: June 5, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Form F–11 under the Securities Act of 1933

Note: Form F–11 does not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB Number:
Expires: Approval Pending
Estimated average burden hours per response..... 2.0
U.S. Securities and Exchange Commission
Washington, DC 20549

Form F–11

Registration Statement Under the Securities Act of 1933

_____

(Exact name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English (if applicable))

_____

(Jurisdiction of incorporation or organization of Registrant)

(Jurisdiction of primary market of securities being registered)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securities to be registered	Amount to be to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instruction II.F. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. Eligibility Requirements for Use of Form F–11

A. Form F–11 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of equity securities offered or sold for cash upon the exercise of rights to purchase or subscribe for such securities granted by the Registrant to the existing holders of securities of such class (including depositary receipts that evidence such securities) in proportion to the number of such securities held by them as of the record date for the rights offer (assuming, in the case of securities that evidence such securities, that such holders owned the underlying securities directly).

Instruction

For purposes of this Form, the term "equity security" has the meaning specified in Rule 405 of Regulation C (§ 230.405 of this chapter) but does not include: (1) any security convertible, with or without consideration, into an equity security, or carrying any warrant or right to subscribe to or purchase an equity security; (2) any such warrant or right; or (3) any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

B. Form F–11 is available to any Registrant that is a foreign private issuer and that either:

(1) is a Reporting Issuer, or

(2) is exempt from the requirements of Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") pursuant to Rule 12g3–2(b) thereunder, has a class of its equity securities listed or quoted on a designated offshore securities market and currently is in compliance with the obligations arising from such listing or quotation and either: (i) has maintained such listing or quotation for the consecutive 36-month period immediately preceding the commencement date of the offering being registered on this Form; or (ii) has a public float of not less than $75 million.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 of Regulation C (§ 230.405 of this chapter).

2. For purposes of this Form, "Reporting Issuer" means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act") that: (i) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act [15 U.S.C. § 78*l*(b) or § 78*l*(g)] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78*o*(d)]; and (ii) has filed all the materials required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act [15 U.S.C. § 78m(a) or § 78*o*(d)] for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or for such shorter period that the issuer was required to file such material).

3. For purposes of this Form, the term "designated offshore securities market" shall be construed in accordance with Rule 902(a) of Regulation S under the Securities Act.

4. For purposes of this Form, "public float" shall be the market value of the Registrant's equity securities listed or quoted on a designated offshore securities market and held by nonaffiliates of the issuer. "Market value" shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for such shares, the book value of such shares computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such shares is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such shares shall be used. An "affiliate" of an issuer shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year.

5. For purposes of this Form, the "commencement date" of a rights offer is the date the registration statement is filed with the Commission.

C. If the Registrant is a successor Registrant existing after a merger, a spinoff, an arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the 36-month listing requirement of I.B.(2)(i) above if: (1) the time the successor Registrant has been listed or quoted on one of such designated offshore securities markets, when added separately to the time each predecessor had been so listed or quoted at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of the predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfies such 36-month listing requirement; and (2) the successor Registrant has had a class of its equity securities listed or quoted on at least one of such designated offshore securities markets since the business combination and is currently in compliance with the obligations arising from such listing.

D. The rights in connection with the transaction granted to offerees that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to offerees that are U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction

For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the

Registrant, any voting trustee, any depositary share transfer agent or any person acting on behalf of the Registrant for such securities as being located in the United States. "United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

E. This Form may not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act.

II. Application of General Rules and Regulations

A. The Rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in this Form or unless any such Rule refers specifically to this Form. Instead, the rules and regulations applicable in the home jurisdiction regarding form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C apply to filings on this Form unless specifically excluded in this Form.

Instruction

For purposes of this Form, the term "home jurisdiction" shall mean the jurisdiction of the issuer's organization or incorporation, unless the primary market for the securities being registered is some other country, in which case such country where the primary market for the securities being registered is located shall be deemed to be the "home jurisdiction." The "primary market" is the single securities market with the largest aggregate trading volume for the class of the issuer's securities with regard to which the rights are being offered in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Rule 415 under the Securities Act, which permits the registration of certain securities to be offered on a delayed or continuous basis, shall apply to filings on this Form. Attention is directed to Section 10(a)(3) of the Securities Act which provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense. With regard to any such prospectus used more than nine months after the effective date of the registration statement, Rule 427 under the Securities Act, which permits the omission from the prospectus of information previously required to be contained in the prospectus insofar as later information covering the same subjects is contained therein, shall apply to filings on this Form.

D. Five copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

E. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission, in accordance with Rule 111 under the Securities Act, a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

The registration fee is to be calculated at the price at which the rights may be exercised if known at the time of filing the registration statement, or, if not known, at the market value of outstanding securities of the same class included in the registration statement. If the fee is to be calculated upon the basis of the price at which the rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they may be exercised.

Instruction

The market value of the Registrant's outstanding securities shall be the average of the high and low prices reported or the average of the bid and asked price of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

G. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or any amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

H. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

I. A registration statement on this Form and any amendments thereto shall become effective upon filing in accordance with Rule 468. As provided in Rule 473(d), delaying amendments are not permitted in connection with any registration statement on this Form, and any attempt to interpose a delaying amendment of any kind will be ineffective.

J. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

K. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

III. Compliance With Exchange Act and Auditor Independence & Reporting Requirements

A. Pursuant to Rule 12h–5 under the Exchange Act, a Registrant shall be exempt from reporting obligations under Section 15(d) of the Exchange Act if such reporting obligations would have arisen solely from registration of securities on this Form. The Registrant's attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange Act and Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act. *See* Exchange Act Release No.

B. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, shall not apply to auditor reports on all financial statements that are included in this registration statement under the Securities Act filed by the issuer on Form F–12.

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents used to offer the rights and underlying securities to offerees in the home jurisdiction of the Registrant including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed or has applied for such listing. Such disclosure document(s)

shall include all information used to make such offers, without regard to whether such information has previously been provided to shareholders. Except as noted hereinafter, such offering circular or prospectus shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other securities regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into home jurisdiction disclosure documents and not required to be delivered to securityholders pursuant to the laws of such jurisdiction.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to offerees or purchasers outside the United States that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any non-U.S. legends; (ii) any discussion of tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any underwriters not acting as underwriters in the United States or a description of the non-U.S. plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable non-U.S. securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

This offering is made by a foreign issuer that is permitted to prepare this prospectus in accordance with the disclosure requirements of its home jurisdiction. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and are subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies.

Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the Registrant's jurisdiction of incorporation. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein.

The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3-2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice.

Item 4. List of Documents Filed With the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement and all documents incorporated by reference into the registration statement.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the home jurisdiction of the Registrant, must be made publicly available in connection with the transaction.

(2) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with any home jurisdiction regulatory authority concurrently with the prospectus.

(3) If any name is signed to the registration statement or amendment pursuant to a power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of_____, Country of_____, on_____, ____.

Registrant _____

By (Signature and Title)_____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

Appendix B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission (the "Commission"), hereby certify pursuant to 5 U.S.C. 605(b) that: Proposed Form F-11 under the Securities Act of 1933 (the "Securities Act"); proposed Rules 441, 468 and 801, proposed changes to Rules 174, 464 and 473, and proposed changes to Forms F-2 and F-3 under the Securities Act; and proposed Rule 12h-5 under the Securities Exchange Act of 1934 (the "Exchange Act"), if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The proposed rules and form and proposed changes to existing rules noted above are intended primarily to facilitate cross-border rights offerings of equity securities by eligible foreign private issuers to their existing U.S. shareholders. The resulting reduction in the expense, time and effort of making such offerings will benefit foreign entities that issue securities, rather than U.S. entities. In connection with the cross-border rights offering proposal, the Commission also is proposing revisions to Form F-2 and Form F-3 to extend the availability of Form F-3 to a broader class of reporting foreign issuers for registration of rights offerings and certain other specified transactions under the Securities Act. Such revisions also would benefit foreign entities registering securities and reporting with the Commission, rather than U.S. entities.

An expected result of adoption of the proposed rules and form and proposed changes to existing rules is that offerings by foreign companies would be made in the

United States in situations where hitherto investors in the United States would have been excluded due to the time and expense of compliance with the regulatory requirements of more than one jurisdiction. The resulting increase in exempt and registered rights offerings in the United States by foreign issuers can be expected to increase ease of investment for small U.S. entities acting as investors. Small U.S. entities are not more likely than large U.S. entities, however, to be affected by the greater ease of investment in offerings of foreign issuers. These effects, in any case, are not expected to be significant for a substantial number of small entities in the United States. Since U.S. holdings in foreign securities are relatively small, the likelihood of such increased offerings in the U.S. significantly affecting a substantial number of small U.S. entities is minimized.

The proposed new rules and form and the proposed amendments to rules and forms are summarized in the attached memorandum.[1] That their primary effect is on foreign entities is apparent from such document.

Dated: June 4, 1991.

Richard C. Breeden,

Chairman.

[1] Note: The above-referenced memorandum is not included in this release.

[FR Doc. 91–13759 Filed 6–13–91; 8:45 am]

BILLING CODE 8010–01–M

---

17 CFR Parts 200, 230, 239, 240, and 260

[Release No. 33–6897, 34–29275; 39–2266; International Series—285; File No. S7–18–91]

RIN 325–AD97

International Tender and Exchange Offers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules, forms, and order.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed tender offer exemptive rules and registration procedures under the Securities Act of 1933,[1] the Securities Exchange Act of 1934,[2] and the Trust Indenture Act of 1939,[3] intended to facilitate the inclusion of United States investors in tender offers and exchange offers for a foreign target company's securities. The proposals would permit offers to be made to United States investors in compliance with foreign law and regulation, where the holdings by United States investors of the securities sought in the bid do not exceed a specified ceiling.

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

The release also proposes for comment procedures to be made available for tender offers and exchange offers for United Kingdom companies to allow for compliance with both the Williams Act [4] and the City Code on Takeovers and Mergers ("City Code").[5]

And finally, the Commission is announcing proposed technical amendments to its general organization rule which delegates authority to the Directors of the Divisions of Corporation Finance and Market Regulation.[6] The amendments would permit the Directors to exempt tender offers from certain provisions of the Williams Act requirements.

DATES: Comments should be received on or before September 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–18–91. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: John C. Maguire, Office of Tender Offers, Division of Corporation Finance, at (202) 272–3097; For questions on Rules 10b–6, 10b–7, 10b–13 and Rule 13e–4 under the Exchange Act contact George E. Scargle, Office of Legal Policy and Trading Practices, Division of Market Regulation, at (202) 272–2848, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment:

(1) Proposed Form F–12 under the Securities Act of 1933;

(2) Proposed Form 13E4H, and Form 14D1C under the Securities Exchange Act;

(3) Proposed Rules 440, 469, and 802, and proposed changes to Rules 174, 464, 473 under the Securities Act;

(4) Proposed Rule 12h–4, and proposed changes to Rules 12g3–2(b), 13e–4 and 14d–1 under the Securities Exchange Act;

(5) Proposed changes to Rules 30–1 and 30–3 under the Commission's rules of practice; and

(6) Proposed Rule 4d–10 under the Trust Indenture Act of 1939.

[4] The Williams Act, enacted in 1968 and amended in 1970, added sections 13(d), 13(e), 14(d), 14(e) and 14(f) to the Securities Exchange Act. Act of July 29, 1968, Pub. L. No. 90–439, 82 Stat. 454; Act of Dec. 22, 1970, Pub. L. No. 91–567, 1, 2, 84 Stat. 1497 (codified at 15 U.S.C. 78m(d)–(e) and 78n(d)–(f) (1970)).

[5] The City Code on Take-overs and Mergers (1990) 2 Fin. Serv. Rep. (CCH Ltd).

[6] 17 CFR 200.30–1 and 200.30–3.

Table of Content

I. Executive Summary
  A. Background
  B. Summary of Proposals
II. Tender Offers
  A. Tender Offer Regulation
    1. United States Ownership Ceiling
    2. Equal Treatment of U.S. Holders
    3. Dissemination and Disclosure
III. Exchange Offers
  A. Overview
  B. Proposed Rule 802
  C. Registration of Exchange Offers on the Basis of Foreign Disclosure Documents
    1. Ownership of Target Securities
    2. Offeror Qualifications
    3. Mechanics of Registering on Form F–12
    4. Business Combinations
  D. Continuous Reporting Requirement
  E. Trust Indenture Act Requirements
  F. Exchange Act Provisions Affecting the Activities of Certain Participants in Tender and Exchange Offers
IV. United Kingdom Exemptive Order
  A. Withdrawal Rights and the Prompt Purchase of Tendered Shares
  B. All Holders
  C. Public Announcements
  D. Guaranteed Deliveries
  E. Disclosure Documents
  F. Purchases Outside the Offer
V. Cost–Benefit Analysis
VI. Regulatory Flexibility Certification
VII. Request for Comments
VIII. Statutory Basis of Rule, Form Proposals and Rule and Form Changes
VI. Text of Rules, Form Proposals and Rule and Form Changes

I. Executive Summary

A. Background

On June 6, 1990, the Commission issued a concept release [7] addressing the conduct of tender and exchange offers in the context of the growing internationalization of the world's securities markets. The Concept Release was issued in recognition of the general practice of foreign bidders and issuers to seek to exclude U.S. investors from a multinational offer, where U.S. investors comprise a small portion of a foreign target company's security holdings, based upon a determination that the cost of compliance with U.S. securities laws and regulations outweighs the benefit of U.S. security holder participation. In the case of exchange offers, foreign issuers often are unwilling to register securities with the

[7] Concept Release on Multinational Tender and Exchange Offers, Securities Exchange Act Release No. 28093 (June 6, 1990) (55 FR 23751) (hereinafter "Concept Release").

Commission under the Securities Act of 1933 ("Securities Act") [8] and incur a continuous reporting obligation under the Securities Exchange Act of 1934 ("Exchange Act").[9] When excluded from participation in a tender or exchange offer, U.S. holders are denied the opportunity to receive a significant premium for their shares or participate in what may be an attractive investment opportunity.

Securities markets around the world have become increasingly global as U.S. investors have increased their holdings in foreign securities and foreign issuers have expanded their use of the U.S. capital markets. Currently, approximately 425 foreign issuers, representing 30 countries, have securities traded on an exchange in the United States or on NASDAQ and approximately 1,100 issuers, representing 25 foreign countries,[10] furnish information to the Commission pursuant to Rule 12g3–2(b).[11] In addition, U.S. investors purchased an estimated $130.9 billion in foreign equities in 1990, up from $10.4 billion in 1980.[12]

The evolution of an increasingly international marketplace has resulted in tender and exchange offers being made across national boundaries to holders resident in several countries.[13] This trend also has been accelerated by the prospect of a unified European market in 1992, where a significant number of cross border acquisitions have occurred in recent years.[14] A significant amount of this activity has been centered in the United Kingdom; over 35% of all cross border purchases in 1990 by European Community companies emanated from the United Kingdom.[15] In the United Kingdom itself, 239 takeovers were commenced in 1990 for U.K. companies subject to the City Code on Take-overs and Mergers ("City Code").[16] Although data on the percentage of target company shares held by U.S. investors generally is not available,[17] these acquisitions routinely have excluded shareholders resident in the United States where their holdings were not necessary for the success of the offering.[18]

In light of the increasing U.S. ownership of foreign securities and the likelihood of significant acquisition activity with respect to securities of foreign issuers in the future through mergers, tender offers, and exchange offers, the practice of excluding U.S. holders is expected to have an increasingly significant effect both in terms of the number of U.S. investors affected and the potential number of transactions involved. Despite their exclusion, U.S. investors are directly affected by these transactions, since they generally will be forced to sell into the market, incurring significant transaction costs not associated with the tender or exchange offer, or relegated to minority shareholder status with significantly less liquidity and subject to the possibility of being cashed out in a subsequent "freeze-out" merger.

The Commission's Concept Release posed the fundamental question of whether U.S. investors' interests would be better served by insisting upon compliance with U.S. regulations for all offers extended into this country, resulting in the continued exclusion of U.S. security holders from tender and exchange offers, or facilitating the participation of U.S. investors on equal terms with foreign security holders, with the protections afforded by the target company's regulatory scheme and U.S. antifraud provisions. Commenters overwhelmingly endorsed the view that U.S. investors would be better served by their inclusion in the offer, even where they have to rely on a foreign regulatory scheme.[19]

B. Summary of Proposals

The rules proposed today would permit tender offers for a foreign issuer's securities, whether subject to section 12 of the Exchange Act [20] or subject only to section 14(e) [21] and Regulation 14E of the Exchange Act,[22] to proceed in the U.S. on the basis of the applicable regulation of the target company's home jurisdiction,[23] where a small percentage of the shares sought are held of record by United States holders. Under the new procedures, offers eligible for the proposed exemptions would not be subject to the disclosure, filing, dissemination and minimum offering period requirements, proration and withdrawal rights, and other requirements of Rule 13e–4 and Regulations 14D or Regulation 14E,[24] other than Rule 14e–3 insider trading prohibitions.

The conditions for reliance on the proposed rules would be (1) that 10 percent or less of the class of securities sought in the tender offer are held by U.S. holders other than U.S. holders of more than 10 percent of the subject class; [25] (2) in the case of a class of securities otherwise subject to Rule 13e–4 or Regulation 14D, that an English language translation of the offering materials, be submitted to, not filed with, the Commission; (3) that U.S. securityholders are permitted to participate in the offer on terms not less favorable than those offered any other holders of the same class of securities sought in the offer; and (4) that

[8] 15 U.S.C. 77a *et seq.*

[9] 15 U.S.C. 78a *et seq.*

[10] See Securities Exchange Act Release No. 28889 (February 15, 1991) (56 FR 7424).

[11] 17 CFR 240.12g3–2(b).

[12] *U.S. Treasury Bulletin* (various issues).

[13] For instance, in FY 1990, 33 tender offers, worth approximately $18 billion, were commenced by foreign bidders in this country alone for equity securities of issuers registered with the Commission under the Exchange Act.

[14] For example, 667 transactions involving European companies, representing US $61.1 billion, were completed in 1990. This represents an increase of 109% ($29.1 billion and 717 transactions) over 1989 (source: IDD Information Services).

[15] Kellaway, "EC Commission pledges freer regime on corporate takeovers," The Financial Times, Nov. 24, 1989, at 1; and Kellaway, "Brussels faces uphill struggle to remove takeover barriers," The Financial Times, Nov. 27, 1989, at 7, citing as source: Acquisitions Monthly.

[16] Peter Lee, Director General, The Panel on Take-overs and Mergers. In comparison, only 96 tender offers were commenced by U.S. and foreign bidders for U.S. registered companies.

[17] See letter of comment from The Panel on Take-overs and Mergers (October 1, 1990), Commission File No. S7–10–90.

[18] See Plessey Co. plc v. General Electric Co., 628 F. Supp. 477 (D. Del. 1986); Hiram Walker Resources Ltd. v. Gulf Canada, C.A. No. 86–0780 (D.D.C. March 25, 1989); Consolidated Gold Fields plc v. Minorco, S.A., 871 F.2d 252 (2d Cir.), cert. denied, 110 S. Ct. 29 (1989); see also Letter regarding Hoylake Investments Ltd., a Bermuda company, for B.A.T. Industries plc., a British company, from SEC Chairman David S. Ruder to Congressman Harold Rogers, Sept. 6, 1989, Cong. Rec. (Sept. 7, 1989), S.10839; and Take-over Panel Decision 89/20 dated 15 September 1989, appeal dismissed, 29 September 1989.

[19] The Commission received 31 letters of comment on the Concept Release, including 10 letters from foreign governments or foreign self-regulatory organizations, and four letters from foreign companies or organizations or foreign law firms. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–10–90 at the Commission's Public Reference Room in Washington, DC.

[20] 15 U.S.C. 78l.

[21] 15 U.S.C. 78n(e).

[22] 17 CFR 240.14e.

[23] Home jurisdiction for the purposes of the rules and forms proposed today is generally defined as the place of incorporation, organization or chartering of the foreign target company. Proposed Rule 802(a)(4) (17 CFR 230.802(a)(4)).

[24] 17 CFR 240.13e–4, 240.14d–1 through 240.14d–10 and 240.14e–1 through 240.14e–3.

[25] In a companion release (hereinafter "Foreign Disclosure Release"), the Commission is proposing amendments to its disclosure system to require foreign issuers to disclose the percentage of each class of securities held of record by U.S. residents in certain documents filed or submitted to the Commission. These amendments are intended to facilitate the ability of third-parties or issuers, contemplating a tender or exchange offer, to ascertain whether compliance with the Williams Act will be required. As part of the revision, the Commission is proposing new forms to facilitate processing of materials furnished to the Commission pursuant to Rule 12g3–2(b), which will require the yearly disclosure of the percentage of each class of securities held by U.S. residents.

dissemination of the tender offer, if required by the home jurisdiction, is provided to U.S. securityholders on a comparable basis as provided to securityholders in the foreign target company's home jurisdiction. The procedures would be equally applicable to Regulation 14D and Regulation 14E offers, except those offers that would otherwise be subject solely to section 14(e) and Regulation 14E, in which case no disclosure document would be submitted to the Commission, since a filing in such offers is not currently required.

With respect to the registration of exchange offers for a foreign issuer's securities under the Securities Act, the Commission is proposing two procedures. The first, proposed Rule 802, an exemptive rule under section 3(b) of the Securities Act,[26] would permit an exchange offer to proceed in the United States without registration so long as the aggregate dollar value of the securities offered for exchange in the United States is $5 million or less. Debt securities issued pursuant to this exemption would be exempt from the requirements of the Trust Indenture Act of 1939 ("Trust Indenture Act").[27] And second, registration under the Securities Act on the basis of the disclosure documents prepared in accordance with the registration requirements of the foreign target company's home jurisdiction would be provided under cover of proposed Form F–12.[28] Proposed Form F–12 would be available if five percent or less of the foreign target's securities prior to the exchange offer were held by U.S. holders other than by U.S. holders of more than 10 percent of the subject class and certain other conditions with respect to the offeror were met. These conditions include the requirement that an offeror (whether a third-party bidder or issuer) is a foreign private issuer, has made an initial submission pursuant to Rule 12g3–2(b) of the Exchange Act on or before the filing of the Form F–12, has a class of equity securities listed or traded on a "designated offshore securities market" [29] for the 36 months immediately preceding the offering, and is currently in compliance with the applicable listing and reporting requirements of the designated offshore securities market at the time of the exchange offer, or alternatively, has a 36 month operating history and a public float of $75 million. Proposed Form F–12 also would be available for the registration of securities to be issued in a merger, arrangement or other similar business combination.

The rules, forms and order proposed today would permit single-jurisdiction regulation with respect to both the tender offer and registration requirements, so that multijurisdictional cash tender offers, exchange offers and business combinations may be made more efficiently and at less expense. The regulatory authorities of the target company's jurisdiction would be responsible for establishing the applicable disclosure standards for any of the above offers. As a general rule, the Commission would not expect the documents submitted or filed with the Commission to be reviewed by the staff; such review, if any, would be left to the foreign target company's jurisdiction.

With respect to continuous disclosure requirements under the Exchange Act, any obligation arising under section 15(d) of the Exchange Act [30] as a result of the registration of securities on proposed Form F–12 would be suspended. Moreover, the registration of securities on proposed Form F–12 would not disqualify a foreign private issuer from maintaining its exemption under Rule 12g3–2(b) from the registration requirements of section 12(g) of the Exchange Act following the exchange offer.[31] However, an offeror desiring to use Form F–12 would be required to make an initial submission, pursuant to Rule 12g3–2(b) of the Exchange Act, on or before the offeror files the Form F–12 [32] if the offeror has not previously filed or furnished information to the Commission.[33]

The Commission is currently working with the North American Securities Administrators Association, Inc. ("NASAA") to determine whether existing state blue sky exemptions would accommodate the rules proposed today, or whether a new exemption under the Uniform Securities Act, necessitating adoption by the states, would be required. The usefulness of proposed Rule 802, as well as the proposed registration procedures, depends in large degree on a parallel exemption being implemented by the states, and acceptance of filings on Form F–12 in satisfaction of state registration requirements.

As proposed, the tender offer exemptive rules, Rule 802 and Form F–12 would not be available for the securities issued by an investment company that is registered or required to be registered under the Investment Company Act of 1940.[34]

The Commission also is proposing to formalize the accommodations arrived at with the United Kingdom's Panel on Take-overs and Mergers to permit tender offers for securities of a U.K. chartered company that is a foreign private issuer to be conducted pursuant to the requirements of both the Williams Act and the City Code. The proposed exemptive order would allow these offers to be conducted simultaneously in the United States and the United Kingdom without the need for case-by-case relief from certain provisions of the Williams Act as currently has been the practice. The offering circular would be prepared according to the requirements of the City Code and would be filed with the Commission and incorporated by reference to satisfy the requirements of Schedules 14D–1 and 14D–9,[35] thus allowing bidders for a United Kingdom company, subject to the City Code, to conduct the tender offer in the United States in accordance with the Commission's tender offer rules on the basis of the U.K. offering document. However, no provision beyond that provided for all foreign exchange offers is being proposed at this time for the registration of exchange offers for U.K. chartered companies.

Finally, the Commission is proposing a technical amendment to its general organization rule which delegates to the Directors of the Divisions of Corporation Finance and Market Regulation the authority to exempt tender offers from complying with certain provisions of the Williams Act. The Commission has previously delegated to these Directors the authority to grant relief from the all-holders requirement and the best price provision pursuant to Rule 14d–10(e) and Rule 13e–4(h)(7).[36] In addition, the Director of the Division of Market Regulation has the broad authority under Rule 13e–4(g)(7) to grant exemptions for certain issuer tender offers, either unconditionally, or on specified terms and conditions, as not constituting a fraudulent, deceptive or manipulative act or practice, which

[26] 15 U.S.C. 77c(b). See also Section III.A. and proposed rule 802 (17 CFR 230.802).

[27] Proposed rule 4d–10 of the Trust Indenture Act (17 CFR 269.4d–10).

[28] 17 CFR 239.44.

[29] See rule 902(a)(1) of Regulation S under the Securities Act (17 CFR 230.902(a)(1)).

[30] 15 U.S.C. 78o(d).

[31] 15 U.S.C. 78l(g).

[32] 17 CFR 230.12g3–2(b).

[33] A foreign private issuer that previously furnished documents to the Commission pursuant to Rule 12g3–2(b) would be required to be current in its submissions as required by Rules 12g3–2(b)(iii) and (iv) (17 CFR 240.12g3–2(b)(iii) and (iv)) in order to use any of the proposed rules or forms.

[34] 15 U.S.C 80a–1 *et seq.*

[35] 17 CFR 240.14d–100 and 240.14d–101.

[36] 17 CFR 240.14d–10(e) (Division of Corporation Finance) and 240.13e–4(h)(7) (Division of Market Regulation).

authority has not been delegated to the Division of Corporation Finance. The action taken today is consistent with existing procedure and will facilitate the timely disposition of requests for exemptions from these provisions prior to the commencement of a tender offer.

II. Tender Offers

A. Tender Offer Regulation

As outlined above, third-party and issuer tender offers for a foreign private issuer [37] whose securities are held almost entirely outside the United States would be made in the United States in compliance with the tender offer regulation of the foreign target company's home jurisdiction. Such predominately foreign tender offers would be permitted to be made in the United States on the basis of the procedural requirements and documentation mandated by the foreign target's home jurisdiction. The steps taken today are intended to encourage bidders and issuers to extend such offers to all target company shareholders, including U.S. securityholders.[38]

The controlling regulations would be those of the foreign target company's home jurisdiction, as the likely jurisdiction with the center of gravity of the bid including the place of significant shareholdings, and the jurisdiction whose regulatory scheme will more likely than not apply. Home jurisdiction is defined in the proposals to mean the jurisdiction of incorporation, organization or chartering of the foreign target company.[39] For example, if a company incorporated in France made an offer for all outstanding ordinary shares of a company chartered in the United Kingdom, with a small percentage of the U.K. company's shares held in the United States, the offering documents generally would be those prescribed by the City Code, both with respect to the tender offer procedures and disclosure, and with respect to the prospectus requirements in a registered exchange offer, as discussed below.[40]

However, more than a single country, as well as states or provinces within a country, may assert jurisdiction over an offer, depending on the location of investors and/or the principal trading market, as well as the target's business operations and executive management.[41] In those instances where more than one jurisdiction asserts authority over an offer, because of significant securityholdings within that country or as a result of business activities or assets within that country, the equal treatment provisions of the proposed exemptions and form requirements would mandate that U.S. securityholders receive the benefits of any additional protections or disclosures made available to non-U.S. securityholders. If the bidder or issuer does not wish to extend those additional protections or disclosures to securityholders outside the jurisdiction mandating the additional protections or disclosures, and thus extends the offer on different terms and conditions to holders in different jurisdictions, the bidder or issuer would have to seek relief from the equal treatment requirements and the Commission would determine on a case-by-case basis which set of procedures should apply to U.S. holders in order for the transaction to proceed in the United States.[42] The Commission requests comment on the appropriateness of relying on the foreign target company's home jurisdiction to regulate not only the tender offer procedures and disclosures, but also the prospectus requirements in a registered exchange offer.

Pursuant to amendments to Rule 14d–1 and Rule 13e–4 [43] proposed today, a third-party or issuer tender offer for a class of securities of a foreign target company would be exempt from the procedural and disclosure requirements of the Williams Act if (1) U.S. holders, other than U.S. holders of more than 10 percent of the subject class, hold 10 percent or less of the class of securities sought in the tender offer; (2) except in the case of offers that would otherwise only be subject to section 14(e) of the Exchange Act, an English language translation of the offering materials, either published in the United States or delivered to U.S. investors in accordance with foreign regulatory requirements is submitted to (not filed with) the Commission; (3) U.S. holders are permitted to participate in the offer on terms not less favorable than those offered any other holder of the same class of securities; and (4) dissemination of the tender offer, if required by the home jurisdiction, is provided to U.S. securityholders on a comparable basis as provided to securityholders in the foreign target company's home jurisdiction.

Under the proposal, the nationality of the bidder would not determine the availability of the rules with respect to the Williams Act requirements. Both U.S. and foreign bidders for a foreign target company would be eligible for the new procedures with regard to cash tender and exchange offers (including the proposed Rule 802 exemption from registration).[44] Although U.S. companies could not avoid the applicability of the Williams Act by excluding U.S. securityholders from a tender offer for a foreign target company, the potential regulatory inequality that could result if U.S. companies were required to comply with multiple regulatory schemes appears to outweigh the need to impose additional costs on United States bidders, particularly in instances of competing foreign and U.S. offers. The Commission requests comment on the appropriateness of permitting U.S. bidders to extend offers for foreign securities to U.S. investors in compliance with a foreign regulatory scheme.

Under the new procedures, offers eligible for the proposed exemptions would not be subject to the disclosure, filing, dissemination and minimum offering period requirements, proration and withdrawal rights, and other requirements of Rule 13e–4 and Regulation 14D or Regulation 14E,[45] other than Rule 14e–3 insider trading prohibitions. The procedures would be equally applicable to Regulation 14D and Regulation 14E offers, except that in offers that would otherwise be subject solely to section 14(e) and Regulation 14E, no disclosure document would be required to be submitted to the

---

[37] "Foreign Private Issuer" is defined in Rule 3b–4(c) under the Exchange Act and Rule 405 under the Securities Act (17 CFR 240.3b–4(c) and 230.405). The terms foreign target company or foreign private issuer are used interchangeably throughout the release.

[38] With respect to rights offerings, which may be used by a bidder to raise funds to make an acquisition, the Commission is proposing, concurrently with this Release, rules that would facilitate the extension of rights offerings into the United States if certain tests were met. Cross-Border Rights Offers (hereinafter "Rights Offering Release").

[39] Proposed Rule 802(a)(4) (17 CFR 230.802(a)(4)).

[40] See *infra* Section III.C.

[41] Like the United States, Canada, Japan, and France regulate bids for foreign companies on the basis of domestic market interest or holdings. Most other jurisdictions only apply their takeover codes to offers for domestic companies, although some jurisdictions reserve the right to apply their regulation to offers for foreign chartered companies if the transaction is predominately domestic. See, *e.g.*, City Code Introduction 4 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), A–7 at 140,243.

[42] One significant factor that the Commission will consider in determining which jurisdiction's regulatory scheme should control is where the majority of securityholders are located.

[43] Proposed Rule 14d–1(c) (tender offers); proposed Rule 14e–1(c) (target company's response); and proposed Rule 13e–4(h) (issuer tender offers).

[44] This approach would not, however, govern the availability of proposed Form F–12. See Section III.C.2.

[45] 17 CFR 240.13e–4, 240.14d–1 through 240.14d–10 and 240.14e–1 through 240.14e–3.

Commission, since a filing in such offers is not currently required.

1. United States Ownership Ceiling

The proposal incorporates a 10 percent ceiling for U.S. ownership in light of a number of factors including, but not limited to, the stated purpose of encouraging foreign bidders to extend multinational tender offers to U.S. investors, the degree of U.S. interest warranting the full application of the protections of the federal securities laws, and a balancing of the benefits and costs of any proposed rules. The Commission requests comment on the ceiling to be used under the proposed rules and whether the percentage should be increased (*e.g.*, to 15 or 20 percent) or decreased (*e.g.*, to 7.5, 5 or 3 percent)? Comment is requested whether the ceiling on ownership in the United States should instead be subject to a limit on the dollar amount of securities to be purchased, or on the number of beneficial or record holders in the United States. Furthermore, the Commission requests comment on whether there should be two categories of bids, one with a higher ceiling (*e.g.*, 15 or 20 percent) for those offers that, either voluntarily or pursuant to the regulatory schemes of a foreign jurisdiction provide for prescribed disclosure, minimum offering periods, prorationing, and equal treatment of securityholders, and with whom the Commission has a comprehensive Memorandum of Understanding ("MOU") or other agreement providing for the exchange of information, including information relating to tender offers. Should there be a lower ceiling (*e.g.*, 7.5, 5 or 3 percent) for partial offers? Also, comment is requested whether there is a need to accommodate those transactions where the ability to avoid jurisdiction would be unlikely because U.S. securityholdings are necessary to the success of a transaction, and the offeror is subject to the all holders requirement of Rule 14d–10 under the Exchange Act.[46]

The Commission proposes to calculate the 10 percent ceiling by reference to securities held of record by U.S. holders, other than U.S. holders of more than 10 percent of the subject class of the issuer.[47] Comment is requested, however, on the appropriateness of excluding U.S. holdings of more than 10 percent from the calculation. In measuring the percentage of the class of securities held by U.S. holders, securities convertible into or exchangeable for securities of such class would not be included in the calculation under the proposal. Comment is requested as to the appropriateness of excluding these types of securities. American Depositary Receipts ("ADRs") exchangeable or convertible for such securities, however, would be included. Common stock or ordinary shares represented by ADRs would be included in both the numerator and the denominator in calculating the percentage of outstanding securities of the target class held in the United States, treating ADRs and ordinary shares as a single class held both in the United States and the foreign jurisdiction, as is currently the case.

The calculation of the percentage of the class of securities held by U.S. holders would be determined as of the foreign target company's latest fiscal year end. The Commission is concurrently proposing revisions to Regulation S–K,[48] Form 20–F [49] and Rule 12g3–2(b) [50] to require foreign private issuers using the above forms or rules to disclose on an annual basis the extent to which their equity securities are held by U.S. holders.[51] Therefore, a bidder seeking to acquire securities of a foreign target company that files or furnishes information to the Commission under one of the above rules or forms would be permitted to rely on the foreign target company's latest fiscal year end report, either on Form 10–K, Form 20–F, or proposed Form 12–FA,[52] or on the foreign target company's most recent filing under the Securities Act or initial submission on proposed Form 12–F [53] in determining the amount of securities held by U.S. securityholders. In addition, a third-party bidder or issuer, instituting a subsequent competing offer, will be permitted to use the same information as to U.S. securityholdings as the initial bidder or issuer in order to calculate the percentage of U.S. record ownership. In this manner, an offer commenced during the pendency of a competing offer being conducted pursuant to the proposed rules, would be permitted to take advantage of the rules, regardless of an interim filing of an annual report disclosing greater than 10 percent holdings in the United States.[54] However, the Commission requests comment on whether a more current time frame, such as the quarterly basis adopted in the multijurisdictional disclosure system with Canada,[55] should be used, taking note of the fact that most foreign companies are only subject to semi-annual reporting and may not have access to a current shareholder list on a quarterly basis.[56] Comment also is requested on whether bidders should be permitted to use the proposed rules even though disclosure with the Commission reflects greater than 10 percent U.S. ownership, if a bidder has a reasonable basis for believing that U.S. security holdings are below the ten percent threshold after excluding U.S. holders of more than 10 percent of the subject class.

Where the foreign target company is neither a reporting company under the Exchange Act nor has submitted reports pursuant to the exemption provided under Rule 12g3–2(b), the bidder or issuer may presume that the U.S. ownership does not exceed the ceiling amount, unless it has knowledge to the contrary. Comment is sought on the appropriateness of the proposed safe harbor.

2. Equal Treatment of U.S. Holders

To take advantage of the proposed rules, the offeror must extend its offer to all U.S. securityholders of the class of securities subject to the tender offer (including ADRs),[57] and U.S. securityholders must be permitted to participate in the tender offer on terms not less favorable than those offered any other holder of the same class of securities sought in the offer. If the bidder chooses to offer securityholders in a foreign jurisdiction one form of consideration and securityholders in another jurisdiction a different form of consideration, or an option to choose between alternative forms of consideration, U.S. holders must be provided an opportunity to choose from among each form of consideration offered. Appropriate adjustments would be permitted with respect to ADRs

[46] 17 CFR 240.14d–10.

[47] See generally, Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canada, Securities Exchange Act Release No. 28561 (October 22, 1990) (55 FR 46288, 46289) (hereinafter "MJDS Reproposal").

[48] 17 CFR 229.20 et seq.

[49] 17 CFR 249.220(f).

[50] 17 CFR 240.12g3–2(b).

[51] See Foreign Disclosure Release, *supra* fn 25.

[52] Proposed Form 12–FA (17 CFR 249.212–FA).

[53] 17 CFR 249.212–F.

[54] Under the multijurisdictional disclosure system with Canada ("MJDS") approved by the Commission on May 30, 1991, the calculation of U.S. record holders will be made as of the subject company's last fiscal quarter or, if the quarter ended within the last 60 days, as of the subject company's preceding quarter.

[55] *Id.*

[56] Those countries requiring semi-annual reporting include Australia, France, Germany, Italy, Japan, Luxembourg, Netherlands, Spain, and the United Kingdom.

[57] Proposed Rules 14d–1(c)(1) and 13e–4(h)(1) (17 CFR 240.14d–1(c)(1) and 240.13e–4(h)(1)).

representing a multiple or fraction of ordinary shares or other common stock that is the subject of the offer. Comment is sought on whether additional measures are necessary to ensure equal treatment of persons holding through ADR facilities rather than holding the ordinary or common shares directly. For example, should specific measures be adopted by the Commission to ensure that persons holding through an ADR facility receive offering materials and are provided the same opportunity and ability to participate in the offer as a person holding the ordinary or common stock?

An exception to the equal treatment requirement is being proposed to permit offerors conducting an exchange offer to offer securityholders in a particular state only cash, where after a good faith effort to register or qualify the offer, the sale of the securities is prohibited in that state under blue sky law provisions, so long as the cash consideration has previously been offered securityholders in any other jurisdiction. If cash is not being offered elsewhere, securityholders in that state may be excluded. Moreover, an offeror would not be required to extend an alternative consideration to securityholders in any other state. Should the good faith effort to register or qualify an offer an appropriate standard: Or should such an effort be required only with respect to those states that permit an offeror to register or qualify an offer by filing Form F-12? In addition, if the exchange offer in the United States were exempt from registration under the Securities Act pursuant to proposed Rule 802, the offeror would be permitted to offer cash only consideration to target company securityholders residing in any state that does not provide for a corresponding exemption so long as the cash consideration has previously been offered securityholders in any other jurisdiction. Again, if cash is not being offered to any holder, securityholders in that state may be excluded. Comment is requested whether the Commission should require that an offeror conducting an exchange offer at a minimum offer securityholders cash consideration for their securities rather than excluding completely securityholders in a particular state.

It is quite common in the United Kingdom for a bidder in a cash tender offer to extend a "loan note" option to the target company's securityholders, allowing target securityholders to receive a short-term note, which may be redeemed in whole or in part for cash at par on any interest date in the future, in lieu of receiving cash at the conclusion of the offer. [58] The loan note alternative permits a U.K. securityholder to receive, at the securityholder's option, the cash consideration over a delayed period, usually five years, thereby deferring any capital gain that may be applicable to the transaction until such time as the securityholder either redeems the notes or the company redeems the notes at expiration. The proposed rules would not require that a loan note alternative, or any other comparable tax deferral arrangement that may be permitted by another foreign country, be extended to U.S. securityholders. The Commission requests comment on whether, despite the fact that U.S. holders would not be entitled to receive the tax benefit associated with the loan note alternative or other comparable tax deferral arrangements, U.S. holders should be given the opportunity to receive the same consideration as residents of any other country, which in these instances would necessitate the filing of a registration statement in the United States, absent an exemption. Comment also is sought on whether there are circumstances or arrangements other than blue sky law registration and tax deferral arrangements that should be accorded an exception from the equal treatment requirement.

3. Dissemination and Disclosure

The rules provide that dissemination of the offer shall be in accordance with the requirements of the foreign target company's home jurisdiction, with two exceptions. First, any offering circular/document disseminated in the United States shall be in English. Second, where dissemination is required or permitted by publication, such publication shall also be in a United States newspaper of general circulation. [59]

As noted, the disclosure provided to U.S. securityholders generally would be governed by the requirements of the foreign target company's home jurisdiction. An offering circular disseminated or sent to U.S. securityholders nevertheless would be required to contain informational legends on the outside front cover page of the offering circular, or in any published notice, explaining that the offer is being conducted pursuant to the laws of the jurisdiction of the foreign target company and that certain rights of U.S. securityholders may be affected. [60]

Except in the case of registered exchange offers, offering materials would be required to be submitted to the Commission for notice purposes only under the cover of proposed Form 14D1C, for third-party offers, or proposed Form 13E4H, for issuer tender offers, unless the offer would otherwise only be subject to Regulation 14E, which does not impose a filing obligation. The materials submitted would not be deemed filed with the Commission and an offeror would not be subject to liability under Section 18 of the Exchange Act. [61]

A number of commenters responding to the Concept Release expressed concern that antifraud provisions of the Exchange Act would continue to apply to these transactions. However, the antifraud rules relating to insider trading, and other kinds of fraudulent and manipulative conduct, [62] would be the only substantive antifraud provisions applicable to these types of transactions. These provisions should not serve to inhibit an offeror from including U.S. securityholders in the tender offer. Even if the offering circular were not disseminated in the United States, a foreign bidder generally would be liable for fraud, not only in the foreign target company's home jurisdiction, [63] but in the United States as well, given the foreseeable effect of the fraud in the United States.

In the case of tender offers that would have a "going private" effect, the issuer and any affiliated bidder would be

[58] "Loan notes" generally are unsecured short-term debt obligations, which are guaranteed as to principal and interest by a bank and permit the holder to require all or any part of the principal amount of the loan notes to be repaid at par together with any accrued interest on any interest payment date. Under U.K. tax laws, a securityholder who does not own more than five percent of the outstanding shares of the target company will not be treated as having made a disposition thereby incurring a capital gains tax to the extent the securityholder receives loan notes. A U.S. securityholder, on the other hand, would be treated as having made a disposition under the Internal Revenue Code, since the securityholder would not be accorded special treatment under the installment sales method of income recognition. I.R.C. 453(k)(2)(A).

[59] See Rule 14d-4(b) (17 CFR 240.14d-4(b)) (guidance as to what constitutes adequate publication). In addition, the mailing of a copy of any advertisement that has been published in a foreign newspaper in compliance with foreign law, translated into English, to securityholders of record in the U.S. of the foreign target company would be considered adequate dissemination.

[60] See proposed Form 14D1C, Form 13E4H (17 CFR 240.14d-104 and 240.13e-102) and proposed Rule 802(d) (17 CFR 230.802(d)).

[61] 15 U.S.C. 78r.

[62] Section 14(e), section 10(b) of the Exchange Act (15 U.S.C. 78n(e) and 78j(b)), and Rules 14e-3 and 10b-5 thereunder (17 CFR 240.14e-3, 240.10b-5). Rules 14e-1, 14e-2 and 10b-13 (17 CFR 240.14e-1, 240.14e-2 and 240.10b-13) would not apply to these transactions.

[63] See letter of comment City of London Law Society (Sept. 28, 1990). The Law Society suggests that Rule 10b-5 "does not appear to apply a higher standard of liability than the UK regulatory system."

required to comply with Rule 13e–3 of the Exchange Act, if applicable.[64] Rule 13e–3 requires enhanced disclosure in going-private transactions engaged in by the issuer or an affiliate [65] and is designed to assist securityholders by providing them with information from the most knowledgeable sources regarding the terms of the transaction in relation to the business and prospects of the issuer.

The cash tender offer by Aktiebolaget Volvo ("Volvo"), a Swedish company with shares traded on NASDAQ, for Pharmacia Aktiebolag ("Pharmacia"), another Swedish company controlled by Volvo, illustrates the issues that may arise in applying Rule 13e–3 to tender offers involving foreign participants.[66] At the commencement of the offer, approximately 7.9 percent of the class of Pharmacia's securities sought in the offer were held in the United States, either directly or through American Depositary Receipts. Compliance by Volvo with Rule 13e–3 was necessary due to Volvo's affiliation with Pharmacia.[67] However, the disclosure required pursuant to Schedule 13E–3 reflected the substantially different obligations of affiliates under Swedish law; the Commission was advised that an affiliated transaction would not be subject to challenge under Swedish law solely on the basis of lack of fairness. Therefore, the Schedule 13E–3 disclosure regarding the Volvo board of director's consideration of the fairness of the transaction focused mainly on how the Volvo directors arrived at their determination to purchase the interests of the unaffiliated shareholders at the offering price.

No exception from the obligation to comply with Rule 13e–3 is being proposed; instead, the Commission will seek to accommodate significant problems created by going-private transactions on a case-by-case basis.[68] Comment, however, is solicited regarding whether the proposed exemptive rules should be expanded to encompass those provisions. Commenters should address the type of protections afforded unaffiliated shareholders in foreign countries in "going-private" or similar types of transactions that present conflicts of interests by an issuer or affiliate; whether these transactions in foreign countries are subject to the same or similar procedural and disclosure requirements that are currently provided by Rule 13e–3 and Schedule 13E–3; and, alternatively, what protections should apply if foreign countries have not developed the same or similar procedural and disclosure requirements applicable to these transactions?

III. Exchange Offers

A. Overview

As noted by the Commission in the Concept Release, and by many of the commenters who responded, exchange offers pose a much more difficult problem from a regulatory perspective than cash tender offers, since an exchange transaction involves the offer and sale of securities in the United States, thereby establishing a continuing presence of the offering person in the United States capital markets. On the other hand, the need for regulatory accommodations may be more acute with respect to exchange offers, since foreign bidders find the prospect of having to comply with the U.S. registration requirements and its attendant reporting obligation to be a particularly strong disincentive to extending an offer to U.S. investors.[69] Additionally, both the necessary preparation of a registration statement and the potential for Commission review create greater time pressure than in a cash tender offer and are more likely to be inconsistent with the foreign tender offer scheme. For first-time foreign issuers registering with the Commission, the amount of time and cost involved in complying with the Commission requirements, especially the reconciliation of financial statements to U.S. generally accepted accounting principles ("GAAP") is considerable, and foreign issuers often view such costs as disproportionate in comparison to the significance of the U.S. securityholders' interest in the transaction.[70]

The rules proposed today would implement a two-tier system to facilitate exchange offers for foreign securities made to U.S. securityholders. The rules and exemptions proposed would provide: (1) A registration exemption, proposed rule 802, pursuant to section 3(b) of the Securities Act, for the foreign issuer's securities offered in exchange for the foreign target company's securities, provided that the aggregate dollar amount of the securities being offered in the United States does not exceed $5 million; [71] or (2) registration on the basis of home country disclosure documents on proposed Form F–12, [72] if five percent or less of the foreign target company's securities prior to the exchange are held by U.S. residents and certain other eligibility standards with respect to the offeror are met. If neither of these alternatives are available to the bidder or issuer involved in the exchange offer, registration of the securities on another Commission form, such as Form S–4 or Form F–4, [73] or qualification for an exemption, such as section 3(a)(9) or section 4(2), [74] would be required.

Rule 802 and Form F–12, as proposed today, would not be available for any securities issued by an investment company that is registered, or is required to register, under the Investment Company Act of 1940. [75] However, the proposed rules would be available for the securities of a foreign issuer that is able to make a public offer of its securities in the United States in reliance on rule 6c–9 under that Act or

---

[64] Section 13(e) of the Exchange Act (15 U.S.C. 78m(e)) and Rule 13e–3 (17 CFR 240.13e–3). A Rule 13e–3 transaction is any transaction or series of transactions which has either a reasonable likelihood or purpose of causing directly or indirectly a class of equity securities of an issuer which is subject to section 12(g) or section 15(d) of the Exchange Act to be held of record by fewer than 300 persons, or causing a class of equity securities of the issuer to be no longer listed on an exchange or authorized to be quoted in an inter-dealer quotation system.

[65] An affiliate of an issuer is a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such issuer. See Rule 13e–3(a)(1) (17 CFR 240.13e–3(a)(1)).

[66] In the Matter of Aktiebolaget Volvo and Procordia Aktiebolag, Securities Exchange Act Release No. 27671 (February 2, 1990).

[67] Pharmacia was not required to comply with Rule 13e–3, since it did not negotiate, approve, recommend or otherwise engage in the tender offer for its shares. See Securities Exchange Act Release No. 17719, Question 5 (April 13, 1981), 3 Fed. Sec. L. Rep. (CCH) ¶17,245–28, *et seq.*

[68] In addition, bidders using the proposed rules and forms would not be relieved of their obligation to file a Schedule 13D that may arise should their beneficial ownership of a foreign target's equity securities registered with the Commission under section 12 of the Exchange Act, exceed five percent.

[69] Multijurisdictional Disclosure, Securities Exchange Act Release No. 27055 (July 24, 1989) (54 FR 32226) (hereinafter the "MJDS Original Proposal").

[70] See letters of comment, British Merchant Banking and Securities Houses Association (Sept. 20, 1990); City of London Law Society (Sept. 26, 1990); International Stock Exchange (Sept. 13, 1990); and Linklaters & Paines (Sept. 17, 1990).

[71] Proposed Rule 802(c)(1) (17 CFR 230.802(c)(1)).

[72] Proposed Form F–12 (17 CFR 239.44).

[73] 17 CFR 239.25 and 239.34.

[74] 15 U.S.C. 77c(a)(9) and 77d(2).

[75] 15 U.S.C. 80a–1 *et seq.* Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–7(d)) prohibits a foreign investment company from using the jurisdictional means to publicly offer its securities for sale in the United States unless the company receives an exemptive order permitting it to register under the Investment Company Act. Nothing in the proposed Rule 802 or proposed Form F–12 obviates a foreign investment company's obligation to apply for an exemptive order from the Commission under section 7(d) permitting it to register under the Investment Company Act if it makes a public offer of its securities in the United States.

an individual exemptive order.[76] These issuers may publicly offer securities of which they are the issuer in the United States without registering under the Investment Company Act, and reliance on the rules proposed today should not present any Investment Company Act concerns. Comment is requested by the Commission as to whether this approach regarding investment companies is appropriate. Comment is requested by the Commission as to the appropriateness of this restriction and whether closed-end funds should be eligible to use the proposed rule and form. Any comments regarding the appropriateness of this restriction should include empirical data regarding exchange offers for foreign issuers by U.S. or foreign companies that are registered or required to be registered under the Investment Company Act.

B. Proposed Rule 802

The proposed exemption would be available to any offeror (whether a third-party bidder or issuer) regardless of whether the offeror is a U.S. company or a foreign private issuer. Furthermore, the proposed rule would not limit the type of securities that may be offered in the transaction. To encourage the extension of exchange offers to U.S. shareholders, which normally would not be extended due to the minimal dollar amount involved, no offeror or security eligibility standards are required for proposed Rule 802. Comment is requested on the necessity for offeror eligibility requirements, e.g., based on size, exchange listing or availability of information on a periodic basis. The Commission also seeks comment on whether issuer exchange offers should be treated less restrictively, on the basis that securityholders have made a pre-existing investment decision with respect to the issuer. In addition, comment is requested on the appropriateness of extending proposed Rule 802 to U.S. offerors; would it be preferable simply to provide for registration using the full extent of incorporation by reference permitted by Form S-3,[77] with automatic effectiveness of the registration statement? Furthermore, comment is sought on whether any limitations should be placed on the type of security that may be offered under proposed Rule 802.

Securities issued in a proposed Rule 802 exchange offer or business combination would be unrestricted securities. Comment is requested on whether any resale restrictions should be imposed on the securities issued in the exchange offer or business combination pursuant to proposed Rule 802.

The proposed exemption from registration requires that U.S. securityholders be permitted to participate in the exchange offer on terms not less favorable than those offered any other holder of the same class of securities sought in the offer, except in those instances where a state's blue sky law does not provide for a comparable exemption, thereby requiring registration or qualification. In such cases, the offeror would be permitted to offer cash consideration, if such consideration is being offered to securityholders in any other jurisdiction as an alternative. If a cash alternative has not been offered elsewhere, the offeror may exclude securityholders resident in that state.[78] In addition, an offeror would not be required to extend an alternative consideration to securityholders in any other state.

Proposed Rule 802 defines "aggregate dollar amount" of the securities being offered to mean the total consideration the offeror proposes to issue upon exchange for securities held by U.S. holders, for a single class of securities, assuming that all securities of the class held in the United States are exchanged.[79] The value of securities being offered shall be based on the market value of the securities to be acquired by the offeror from U.S. holders in the exchange offer, calculated in accordance with Rule 457 under the Securities Act.[80] For purposes of calculating the aggregate dollar value, only the securities to be offered to U.S. securityholders in connection with the exchange offer need be included in the calculation. An exchange offer for another class of securities of the same target or of another company would be deemed a different offering, subject to its own $5 million ceiling. Comment is requested on the usefulness of the proposed exemption. Specifically, is the $5 million ceiling necessitated by section 3(b) of the Securities Act so low as to neutralize the exemption's usefulness by enough offerors to warrant the rulemaking effort on both the federal and state levels?

While the proposed exemptive rule would not require the filing, submission or furnishing of any offering materials to the Commission pursuant to the Securities Act, disclosure concerning the exchange offer will be submitted to the Commission under the tender offer provisions on proposed Form 14D1C or Form 13E4H if the security that is sought in the exchange offer is registered pursuant to section 12 of the Exchange Act. Moreover, in the case of reporting companies, information concerning the exchange offer is likely to be included in the company's periodic reports. Should a foreign offeror be required to make a submission under Rule 12g3-2(b) of the Exchange Act simultaneously with the commencement of the exchange offer? In the case of exchange offers subject only to Section 14(e) of the Exchange Act, where no requirement to submit information has been proposed, comment is requested whether a notice, similar to that required under Regulation D, should be required.[81]

As previously noted, the disclosure provided to U.S. securityholders would be governed by the requirements of the foreign target company's home country. However, any offering circular or notice disseminated or sent to U.S. securityholders, would be required to contain, to the extent applicable, informational legends on the outside front cover page of the offering circular, or in any published notice, explaining that the offer is being conducted pursuant to the laws of the jurisdiction of the foreign target company and that certain rights of U.S. securityholders may be affected.[82]

Under state blue sky laws, securities offered in exchange for securities held by the residents of a particular state, either must be registered under that state's filing and review procedures, or qualify for an exemption from the registration process. Currently, state blue sky laws generally will exempt securities that qualify for certain self-

[76] Rule 6c-9 (17 CFR 270.6c-9), adopted by the Commission in 1987, permits foreign banks and their finance subsidiaries to publicly offer and sell their debt securities and non-voting preferred stock in the United States without registering under the Investment Company Act or obtaining an individual exemptive order. The Commission has also issued a number of individual exemptive orders allowing public offerings in the United States of securities not covered by Rule 6c-9, *e.g.*, equity securities issued by foreign banks and their finance subsidiaries, offerings by foreign insurance companies and their finance subsidiaries, and offerings by foreign bank and foreign insurance holding companies, among others. In August, 1990, the Commission proposed amendments to Rule 6c-9 that would expand the rule to include: (1) Equity securities issued by foreign banks and their finance subsidiaries, (2) all securities issued by foreign insurance companies and their finance subsidiaries, (3) all securities issued by foreign banks and foreign insurance holding companies, and (4) all securities issued by Canadian trust and loan companies. See Investment Company Act Release No. 17682 (Aug. 17, 1990) (55 FR 34569).

[77] 17 CFR 239.13.

[78] Rules 14d-1(c)(1)(i) and 13e-4(h)(1)(i) (17 CFR 240.14d-1(c (1)(i) and 240.13e-4(h)(1)(i)).

[79] Proposed Rule 802(a)(8) (17 CFR 230.802(a)(8)).

[80] 17 CFR 230.457.

[81] 17 CFR 230.253.

[82] Proposed Rule 802(d) (17 CFR 230.802(d)).

executing registration exemptions, such as an exemption for securities listed on a U.S. exchange [83] or NASDAQ/NMS designation.[84] The Commission has undertaken discussions with NASAA, to explore whether the applicable registration provisions of the various state blue sky laws would exempt an offer subject to proposed Rule 802 to shareholders resident in that state. The utility of the proposed approach will depend significantly on the states' efforts to provide comparable exemptions for such offerings.

C. Registration of Exchange Offers on the Basis of Foreign Disclosure Documents

Proposed Form F–12 would permit eligible offerors to register securities in the United States using documents prepared according to the disclosure and/or listing requirements of the foreign target company's home jurisdiction. An offeror that is not incorporated in the same jurisdiction as the foreign target company may nevertheless use its home country disclosure documents for purposes of proposed Form F–12, if the foreign target company's home jurisdiction permits the offeror to use such disclosure documents. As presently structured, proposed Form F–12 would only be available to foreign private issuers that are currently reporting companies or are furnishing information pursuant to Rule 12g3–2(b) or have made an initial submission pursuant to that rule on or before the filing of Form F–12.[85] An exchange offer may be registered on proposed Form F–12 so long as five percent or less of the outstanding class of securities sought in the exchange offer are held of record in the United States other than by U.S. holders of more than 10 percent of the subject class. To be eligible for Form F–12, U.S. securityholders must be permitted to participate in the exchange offer on terms not less favorable than those offered any other holders of the same class of securities sought in the offer. In addition, the proposed rules would permit the exchange of debt or equity securities to be registered on proposed Form F–12.[86]

Paralleling MJDS, the proposals have incorporated a listing and reporting history criteria for offerors to minimize the potential for abuse by insubstantial or start-up companies. The listing requirement also would have the benefit in many jurisdictions of insuring the continued availability of issuer information in the market place.

1. Ownership of Target Securities

The limitation on the use of proposed Form F–12 to register exchange offers involving a foreign target company to transactions where five percent or less of the target class is held by U.S. persons, rather than the 10 percent ceiling proposed with respect to the Williams Act exemptions, is based upon the more significant disclosure and investor protection questions presented in an exchange offer, and the proposed unlimited reliance on the foreign regulatory scheme. As proposed, Form F–12 would be available regardless of the foreign regulatory requirements applicable to these transactions. If the Commission took a more narrow approach, it would significantly curtail the efficacy of the proposal in facilitating the inclusion of U.S. securityholders in foreign exchange offers. Comment is requested whether the Commission should raise the ceiling for U.S. holdings (*e.g.*, 10–15%) for exchange offers made by bidders incorporated in, and listed on exchanges, in those jurisdictions with which the Commission has a comprehensive MOU or other agreement providing for the sharing of information, and where there are regulatory provisions governing exchange offers, i.e., British Columbia, France, Japan, Ontario, Quebec, and the United Kingdom. Comment also is sought on whether the calculation of the five percent level should be based on the subject company's securities held in the United States prior to the exchange offer or should be similar to that provided for business combinations which is based upon the amount of the offerors securities that will be held by U.S. holders upon the completion of the business combination.

Under the proposal, the calculation of the percentage of U.S. record ownership of the foreign target company would be determined on the same basis as under the tender offer proposals.

2. Offeror Qualifications

An offeror that seeks to register an exchange offer or business combination on proposed Form F–12 must have had a class of equity securities listed or quoted on a "designated offshore securities market" [87] for the 36 months immediately preceding the offering, and the offeror must be in compliance with the continuous reporting requirements of such market or supervisory authorities at the time of the exchange offer. The proposed rule provides an alternative to the 36 month listing history for newly listed companies with at least a 36 month operating history, and a public float of at least $75 million.[88] The Commission requests comment on the offeror eligibility criteria. Should there be a size test for all offerors? And, should a reporting history be required for all companies intending to use the proposed form?

The list of designated offshore securities markets currently includes 19 offshore exchanges and off exchange markets. The Commission understands that these exchanges and markets either impose a periodic disclosure obligation on companies whose securities are traded on the market or exchange, or such obligations are imposed by law because of listing or trading on the exchange or market. Rule 902(a) of Regulation S provides that the Commission may designate additional markets that have some or all of the attributes listed in Rule 902(a)(2),[89] including, among others, whether the market has an established operating history; is subject to oversight by a "foreign securities authority," as that term is defined in section 3(a)(50) of the Exchange Act;[90] and whether sufficient trading volume exists to indicate liquidity. Comment is requested whether, as future markets are designated under Rule 902(a)(2), only

[83] Forty-eight U.S. jurisdictions have the exchange-listing exemption for New York Stock Exchange and American Stock Exchange listed securities. Use of the exemption is self-executing in forty-six of these jurisdictions with the other two requiring a filing in order to claim the exemption.

[84] Forty states currently have the equivalent exemption for NASDAQ/NMS designated securities.

[85] Foreign private issuer is defined in Rule 3b–4(c) of the Exchange Act (17 CFR 240.3b–4(c)) as any foreign issuer, unless it has more than 50 percent of the outstanding voting securities held of record either directly or through voting trust certificates or depositary receipts by residents of the United States, and either the majority of the executive officers or directors are United States citizens or residents, or more than 50 percent of the assets of the issuer are located in the United States, or the business of the issuer is administered principally in the United States. See also 17 CFR 230.405.

[86] See infra Section III.E. regarding the Trust Indenture Act of 1939.

[87] See Rule 902(a) of Regulation S (17 CFR 230.902(a)). The Commission notes that the Johannesburg Stock Exchange has been included as a designated offshore securities market under Rule 902(a). However, exchange offers involving securities traded on this exchange may be precluded from using proposed Rule 802 and proposed Form F–12 if they would be considered in violation of the sanctions currently imposed on South Africa by the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 94–440).

[88] The market value of the "public float" is the market value of all outstanding equity securities owned by nonaffiliates. Foreign private issuers would include non-voting common stock in the calculation of public float.

[89] 17 CFR 230.902(a)(2).

[90] 15 U.S.C. 78(a)(50).

companies whose equity securities are listed on those markets that mandate disclosure and continuous reporting of information should be eligible to use proposed Form F–12.

Proposed Form F–12 would be available for registration for any class of securities provided the offeror has a class of equity securities listed or quoted on a designated offshore securities market. Comment is requested whether the form should be limited to that class of securities that is listed or quoted on the designated offshore securities market. Also, comment is requested regarding the appropriateness of using "designated offshore securities market" rather than incorporating the definition of "specified foreign securities market" recently proposed by the Commission in Rule 3b–10(f).[91] In addition, comment is sought with respect to whether the 36 month listing and reporting requirement should be changed to only a requirement for a 36 month reporting history with any securities commission or equivalent regulatory authority.

Proposed Form F–12 also would permit any foreign private issuer formed as a result of a merger, a business combination, a spinoff or a reorganization to tack on the listing history of its predecessors in satisfying the three-year listing requirement for use of the form, if it is unable on its own to satisfy the listing or reporting requirement imposed by the form.[92] Each significant predecessor, taken together with the surviving company, would be required to meet the listing and reporting requirements.[93]

[91] "Specified foreign securities market" would include the International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd., the Montreal Exchange, the Bourse de Paris, the Tokyo Stock Exchange and the Toronto Stock Exchange. See Definitions Principally Relating to International Transactions, Securities Act Release No. 6881 (January 9, 1991) (56 FR 820) (proposing Rule 3b–10(f) (17 CFR 230.3b–10(f))).

[92] Proposed Form F–11 under the Rights Offering Release and Form F–8 under the MJDS also permit successor issuers to tack on listing histories of their predecessors for purposes of satisfying the three-year listing requirement. See Rights Offering Release, *supra* fn 38; MJDS, *supra* fn 54.

[93] For example, if A had been reporting for four years in Ireland, and B had been reporting for two years in the U.K., and A and B in a business combination formed C, which has been reporting for one year in Ireland, C would be deemed to meet the three-year reporting history requirement. The one year of reporting by C when added to the reporting history of A or B in each case would be three years or more. If, however, either A or B had been reporting for less than two years, C would not be deemed to satisfy the three year reporting history test, if A and B were both considered significant participants.

3. Mechanics of Registering on Form F–12

Simultaneously with the earlier of public filing of the offering circular/prospectus with the home jurisdiction regulating the exchange offer or disseminating the offering materials to target securityholders, the offeror would file those documents, under cover of proposed Form F–12, with the Commission. Proposed Form F–12 is essentially a "wrap-around" form to be used for the registration of securities issued in an exchange offer. The form itself provides for, among other things, disclosure of the registrant's name and address, and that of its agent for service in the United States, and includes the foreign prospectus or offering circular, and a list of the exhibits filed with the Commission, including documents that may have been incorporated by reference from filings made in the foreign jurisdiction into the offering circular/prospectus. The proposed form also requires that the registrant add to the offering circular/prospectus that is distributed to U.S. holders, to the extent applicable, certain informational legends advising target securityholders that the investment may have tax consequences in the foreign jurisdiction, that U.S. securityholders may have to pursue legal remedies in a foreign jurisdiction, and that financial statements included in proposed Form F–12 have been prepared in accordance with foreign accounting standards and foreign auditing and auditor independence standards.[94]

Like Forms F–8 and F–80 under the MJDS, Form F–12 provides that the provisions of Regulation C of the Securities Act[95] shall not apply to exchange offers registered on the proposed Form, unless specifically referred to in the proposed Form. Proposed Form F–12 would specifically preserve the application of Rule 408 and addresses shelf offerings, incorporation by reference, English language requirements, and other matters covered by Regulation C.[96] In addition, Regulation C is itself being amended to address effective date, delaying amendments, and consent requirements with respect to Form F–12 filings. Comment is requested whether, unlike the MJDS which relies upon Canadian registration procedures and concepts, additional provisions of Regulation C should apply to exchange offers registered on proposed Form F–12, which is not based upon any comprehensive review of specific foreign regulatory schemes.

[94] See proposed Form F–12, Part I, Item 2.

[95] 17 CFR 230.400 to 230.494, inclusive.

[96] See Rule 400 under Regulation C (17 CFR 230.400), providing that the regulation shall not control where the provisions of a form address the same subject matter.

The proposal distinguishes between the documents required to be disseminated to target securityholders in the exchange offer and the documents to be filed with the Commission in order to register the securities. Offerors would be required to provide target securityholders resident in the United States with the same information (appropriately legended as specified) delivered abroad in the foreign target company's home jurisdiction, except that if the offering circular/prospectus delivered in the home jurisdiction is in a language other than English, an English translation of the offering circular/prospectus must be delivered to U.S. securityholders. Unlike the proposal governing cash tender offers, which does not require a document to be delivered to securityholders if not required by foreign law, the offering circular/prospectus would be required to be delivered to securityholders in accordance with section 5(b) of the Securities Act.[97] Rule 174 would, however, be amended to eliminate the requirement for aftermarket prospectus delivery.[98] Commenters are requested to address whether amendments to Rule 15c2–8 also would be appropriate in this respect.[99]

For purposes of section 5(b) of the Securities Act, the prospectus would consist of the entire disclosure document or documents used to make the exchange offer or business combination. The Commission understands that each of the designated offshore securities markets and/or jurisdictions in which they are located, currently impose a prospectus delivery requirement for registered offerings. Comment is requested whether the regulatory schemes and listing standards of the designated offshore markets, as well as market practice,

[97] 15 U.S.C. 77e(b).

[98] Proposed Rule 174(a) under the Securities Act (17 CFR 230.174(a)).

[99] Rule 15c2–8 (17 CFR 240.15c2–8) provides that it shall constitute a deceptive act or practice for a broker or dealer to participate in a distribution unless the broker or dealer complies with certain delivery prospectus requirements set forth in the rule. Rule 15c2–8(b), however, exempts a broker or dealer from the prospectus delivery requirement if the issuer is exempt from the requirement to file reports pursuant to section 12(h) of the Exchange Act, as provided in proposed Rule 12h–4, with respect to Form F–12 offerings. Nothing in the rules proposed today, except proposed Rule 12h–4, would relieve a broker or dealer from their obligations under Rule 15c2–8.

does in fact require that a prospectus be delivered to each securityholder.

Information that is permitted in the home jurisdiction to be incorporated by reference in the prospectus would not be required to be distributed to target shareholders resident in the United States, unless so required by the regulating home jurisdiction, but would be deemed part of the prospectus,[100] and would be required to be filed as an exhibit to proposed Form F–12.[101] Any document already furnished to the Commission under Rule 12g3–2(b) may be incorporated by reference into proposed Form F–12 without having to be filed as an exhibit to the form. Incorporated information would be part of the registration statement and would be deemed filed for liability purposes.

The form proposed today would be accompanied by Form F–X, which includes not only a consent to service of process and appointment of a U.S. person as agent for process, but also a consent to service of an administrative subpoena and an undertaking to assist the Commission with an administrative investigation.[102] Form F–X further requires that the Commission be advised of any change to the name or address of an agent for service of process.

Under the proposal, the properly completed registration statement on proposed Form F–12 would become effective upon filing. Automatic effectiveness of the registration statement would permit the U.S. offer to proceed on the same time schedule as the offshore offer. Moreover, the registration statement generally would not be subject to prior review by the Commission staff. Therefore, exchange offers or business combinations registered on proposed Form F–12 would commence in the United States simultaneously with the dissemination, if any, or commencement of the offer in the foreign target company's home jurisdiction.[103] Notwithstanding the above relating to the effectiveness of a registration statement on proposed Form F–12, the proposed rules would not permit a registration statement relating to the issuance of debt securities to become effective until the provisions of the Trust Indenture Act of 1939 ("Trust Indenture Act") have been complied with,[104] or an exemption from the provisions of the Trust Indenture Act has been granted pursuant to section 304(d) of the Trust Indenture Act.[105]

In the United States, if any report or opinion of an expert or counsel is quoted or summarized in a registration statement or prospectus filed under the Securities Act, or if an expert is named in the registration statement as having prepared or certified a report or valuation, the written consent of the expert or counsel must be filed as an exhibit expressly consenting to the inclusion of the expert's or counsel's material in the registration statement. Form F–12, as proposed today, would not require experts, including auditors or counsel, to consent to the use of their material so long as it was not prepared or certified directly or for the sole purpose of the proposed Form F–12 registration statement or prospectus provided to U.S. securityholders, but was prepared for example for an offshore offer, for foreign periodic reporting requirements, or for a prior foreign registration statement.[106] The Commission is seeking comment on whether requiring the filing of a consent by experts in connection with offerings on Form F–12 would be impracticable or involve undue hardship on the person filing the registration statement within the meaning of section 7 of the Securities Act. In this regard, commenters should focus on whether the consent requirement is common among foreign registration and listing schemes such that a consent would be obtainable in connection with a Form F–12 filing, and whether it is appropriate to exempt experts or counsel from having to consent to the use of their report or opinion in these types of transactions.

All documents filed with the Commission would be subject to the civil liability and general antifraud provisions of the U.S. securities law applicable to a registration statement filed under the Securities Act.[107] Moreover, such documents would be in the Commission's public files, and therefore subject to public inspection.

As proposed, Form F–12 entirely incorporates the disclosure requirements under applicable foreign law, as defined and construed under the law of the foreign jurisdiction. Other than the specified legends and the English language requirement, no disclosure requirement is being defined by U.S. rule or regulation. Financial statements may be prepared under the standards of the foreign jurisdiction, and may be prepared in accordance with foreign accounting principles by auditors subject to foreign auditing and independence standards.

Commenters on both the Commission's Multijurisdictional Disclosure Release [108] and the Concept Release expressed concern that an offering circular/prospectus prepared in accordance with MJDS forms and requirements could be considered misleading solely because information that is required by the Commission's existing forms is not included based on applicable foreign disclosure rules. As stated in the MJDS, however, the Commission, in adopting the multijurisdictional disclosure system with Canada, adopted as its own requirements the disclosure requirements of the foreign regulatory scheme.[109] The same principles would apply under the rules and forms proposed today with respect to offering materials disseminated in this country, including documents filed with or submitted to the Commission on proposed Form F–12, Form 14D1C and Form 13E4H. A foreign private issuer that complies in good faith with applicable foreign disclosure law, even if such compliance results in the omission of information which might otherwise have been required as a line item as required by United States disclosure law, will constitute compliance with applicable U.S. disclosure law. The Commission requests comment on the applications of this total incorporation of foreign disclosure and solicits comment as to any minimum disclosure requirements that should be imposed.

4. Business Combinations

The Commission also is extending proposed Form F–12 to encompass the registration of securities in connection with statutory amalgamations, mergers,

[100] Such documents or exhibits, filed or incorporated by reference into the offering circular/prospectus, would be part of the registration statement, and subject to liability under sections 11 and 12(2) of the Securities Act (15 U.S.C. 77k and *77(2)) for any misleading statements included therein.*

[101] In addition, if any exhibit or other paper or document filed with the Commission as part of a registration statement is in a foreign language, it must be accompanied by a substantive summary, version or translation in English. *See* Rule 403(c) of Regulation C (17 CFR 230.403(c)).

[102] Form F–X was approved as part of the MJDS.

[103] See proposed Rule 469 under the Securities Act (17 CFR 230.469).

[104] Proposed Rule 469(b) under the Securities Act (17 CFR 230.469(b)).

[105] 15 U.S.C. 77ddd(d).

[106] Section 7 of the Securities Act (15 U.S.C. 77g); proposed Rule 440 to the Securities Act (17 CFR 230.440). In most cases, since a report or opinion of an expert or counsel would be prepared in connection with an offshore offering, or has been prepared in the ordinary course of business, consents of experts would not be required.

[107] Sections 11 and 12(2) and 17(a) of the Securities Act (15 U.S.C. 77k, 77*l*(2) and 77q(a)); Sections 10(b) and 15(c)(1) of the Exchange Act (15 U.S.C. 78j(b) and 78o(c)(1)) and Rules 10b–5 and 15c1–2 (17 CFR 240.10b–5 and 240.15c1–2) thereunder.

[108] MJDS Original Proposal, supra, fn 69.

[109] See MJDS *supra*, fn 54.

arrangements and other extraordinary reorganizations that require the vote of one or more of the acquired companies ("business combinations"). Registration on proposed Form F–12 of these transactions would be permitted if each significant participant [110] is a foreign private issuer, is currently furnishing information pursuant to Rule 12g3–2(b) or has made an initial submission pursuant to the rule on or before the filing of Form F–12, [111] has a security listed on a designated offshore securities market [112] for at least 36 months or meets the alternative operating experience and public float test, and five percent or less of the class of securities being registered would be held of record by U.S. residents other than U.S. holders of more than 10 percent of the subject class, as measured upon the completion of the business combination. The information provided to the foreign regulatory authority in satisfaction of the proxy and other disclosure requirements, as well as any information circular or any other disclosure documents required to be delivered by companies participating in a business combination to their securityholders, would be filed with the Commission under cover of proposed Form F–12 in satisfaction of the Securities Act registration requirements and delivered to securityholders in the United States in accordance with section 5(b) of the Securities Act.

As noted, each significant participant in a business combination must meet the offeror qualifications standard established for exchange offers. As in the case of exchange offers, the listing and reporting history of any participant that itself was the result of a business combination may be combined with each of its predecessor companies. The listing or operating history of any non-qualifying predecessor company could be disregarded if other qualifying predecessor companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the combined entity's assets and gross revenues from the continuing operations.

Comment is requested whether the applicable foreign regulatory schemes or listing requirements exempt business combinations from the prospectus requirements in light of the disclosure that may be provided in an information circular required by applicable proxy solicitation rules. Comment is sought whether the regulatory scheme and the listing or reporting requirements of the designated offshore securities markets are sufficiently comparable so that specific disclosure of certain information as a precondition to the use of proposed Form F–12 for business combinations need not be required?

D. Continuous Reporting Requirement

Issuers that make a registered offering of securities in the United States are subject to continuous reporting requirements under the Exchange Act. section 15(d) of the Exchange Act [113] requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file periodic reports thereafter. This requirement is applicable for the fiscal year during which the registration statement became effective and any subsequent fiscal year in which securities of the class registered are held of record by 500 or more persons at the beginning of such fiscal year. [114] A foreign private issuer that registers an offering in the United States on proposed Form F–12, would be required by section 15(d) of the Exchange Act, absent an exemption, to file Commission continuous reporting disclosure documents (Forms 20–F and 6–K) to satisfy its Exchange Act reporting obligation. Pursuant to section 12(h) of the Exchange Act, [115] proposed Rule 12h–4 [116] would exempt foreign private issuers, with no existing reporting obligation, from any section 15(d) reporting obligation arising from the use of proposed Form F–12. A foreign private issuer that does incur a section 12(g) obligation as a result of having more than 500 securityholders resident in the U.S. after an exchange offer registered on proposed Form F–12 may nevertheless maintain an exemption from registration by continuing to furnish information pursuant to Rule 12g3–2(b); under proposed amendments to Rule 12g3–2(b), registration of securities on proposed Form F–12 would not disqualify a registrant from claiming the exemption, even if the foreign target was a reporting company. [117] Comment is requested as to whether an offeror registering securities on proposed Form F–12 should be required to file periodic reports under section 15(d), where it has over a specified number of securityholders (*e.g.*, 300, 500 or 1000), but be permitted to meet this obligation by filing with the Commission the same documents as it would furnish under Rule 12g3–2(b), so long as the offeror is not listed on a national securities exchange or quoted through an "automated inter-dealer system." Foreign private issuers having a class of securities listed on an exchange or quoted through an "automated inter-dealer system" in the U.S. would be entitled to use proposed Form F–12 but generally would file Commission-mandated continuous disclosure documents such as Form 20–F and 6–K reports. [118]

E. Trust Indenture Act Requirements

As previously noted, there presently are no restrictions on the type of securities that a third-party or issuer may offer in exchange for the securities of a foreign target company in reliance on proposed Rule 802 or proposed Form F–12. Consequently, the proposal would permit debt securities to be offered in an exchange offer for the foreign target company's equity or debt securities. The issuance of debt securities requires compliance with the provisions of the Trust Indenture Act [119] unless such debt securities are exempt, or are issued in transactions which are exempt, from the provisions of the Trust Indenture Act, pursuant to section 304 of the Trust Indenture Act. [120]

As part of the proposals today, pursuant to section 304(d) of the Trust Indenture Act [121] the Commission is proposing to adopt a new rule under the Trust Indenture Act to exempt any debt security issued pursuant to proposed Rule 802 under the Securities Act, whether or not issued pursuant to an indenture, from having to comply with

[110] A significant participant is any foreign private issuer who contributes more than 20 percent of the assets and gross revenues from continuing operations as measured on a pro forma combination of the participating companies most recently completed fiscal year.

[111] An initial submission or existing submission would be required for each company involved in the business combination.

[112] Rule 902(a)(1) of Regulation S (17 CFR 230.902(a)(1)).

[113] 15 U.S.C. 78*o*(d).

[114] 15 U.S.C. 78*o*(d).

[115] 15 U.S.C. 78*l*.

[116] Proposed Rule 12h–4 (17 CFR 240.12h–4).

[117] Proposed Rule 12g3–2(d)(1) (17 CFR 240.12g3–2(d)(1)).

[118] The treatment of issuers who have a reporting obligation arising from listing their securities on a national securities exchange (Section 12(b) of the Exchange Act (15 U.S.C. 78*l*(b))) or having them quoted on NASDAQ will remain unchanged from that which is presently required.

[119] 15 U.S.C. 77aaa–77bbbb.

[120] 15 U.S.C. 77ddd.

[121] 15 U.S.C. 77ddd(d). Section 304(d) provides that the Commission may, by rule or order, exempt conditionally or unconditionally any indenture from one or more provisions of the Trust Indenture Act. Such exemptive authority may be exercised by the Commission "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended" by the Trust Indenture Act.

the provisions of the Trust Indenture Act. [122]

It appears to the Commission that an unconditional exemption from the requirements of the Trust Indenture Act for any debt security issued pursuant to proposed rule 802 under the Securities Act would encourage inclusion of United States investors in tender offers and exchange offers for a foreign target company's securities. In keeping with its articulated goal of expanding opportunities for United States investors to participate in such offers, the Commission is of the view that its enforcement of the statutory requirement that debt securities be issued pursuant to an indenture qualified under the Trust Indenture Act would constitute a significant impairment to the ability of United States investors to participate in these offerings.

So long as the offeror is in compliance with proposed Rule 802, the exchange of debt securities would not be integrated with any other offerings, and thus would not affect the availability of an exemption from the Trust Indenture Act with respect to the issuance of other debt securities. The Commission requests comment on the appropriateness of exempting all transactions subject to proposed rule 802 from the provisions of the Trust Indenture Act. Comment also is requested on whether this exemption should be conditioned on the debt securities being issued pursuant to an indenture or other agreement specifying the rights of the parties, but that such indentures or agreements would not be required to be qualified under the Trust Indenture Act.

If a third-party bidder or issuer fails to qualify for an express exemption under proposed rule 4d–10 or some other provision of section 304 of the Trust Indenture Act, it may apply under section 304(d) of the Trust Indenture Act for an order from the Commission for exemption from one or more provisions of the Trust Indenture Act. In addition, in the absence of an exemption, if the bidder or issuer proposes to appoint a non-U.S. person to act as sole trustee under an indenture, an application may be filed under section 310(a)(1) of the Trust Indenture Act for permission to use a foreign person as the sole trustee. Applications for exemption under section 304(d) or section 310(a)(1) would be made pursuant to such rules and regulations as adopted by the Commission.

[122] Proposed Rule 4d–10 of the Trust Indenture Act (17 CFR 260.4d–10).

F. Exchange Act Provisions Affecting the Activities of Certain Participants in Tender and Exchange Offers

A number of foreign jurisdictions permit participants in tender offers and exchange offers to engage in certain activities that would be prohibited in the U.S. by Rules 10b–6, [123] 10b–7 [124] and 10b–13. [125] In connection with the adoption of the MJDS with Canada, the Commission adopted exemptions with respect to such rules for tender or exchange offers relying on the MJDS. G5126 The exemptions which, under certain conditions, permit securities to be purchased in Canada otherwise than pursuant to the terms of the offer, recognize that Canadian procedures applicable to tender and exchange offers afforded a large measure of the protections provided by Rules 10b–6 and 10b–13. Also, in the Concept Release the Commission requested whether it would be necessary or appropriate to grant exemptions from Rules 10b–6 and 10b–13 for offshore tender and exchange offers. Commenters generally stated that relief from Rules 10b–6 and 10b–13 would be appropriate for tender or exchange offers that are essentially foreign in character, especially if any such exemptions recognized the laws, rules and practices of the foreign jurisdiction governing the offer.

Rule 10b–6 has played an important role in protecting U.S. markets from potentially manipulative conduct during a distribution. [127] The rule is designed to protect the market for the security in distribution as an independent pricing mechanism, free from any influence on the price of the security that may result from bids or purchases of the distribution security or related securities by distribution participants or other persons having a financial or other stake in the success of the distribution.

Many foreign jurisdictions do not have anti-manipulation provisions similar to Rule 10b–6. In fact, foreign jurisdictions may have rules or procedures that conflict in various respects with that rule. [128] Flexible application of Rules 10b–6, 10b–7, and 10b–13 appear to be necessary and appropriate to encourage foreign offerors to permit U.S. securityholders to participate fully in tender offers and exchange offers for foreign securities. At the same time, the importance of maintaining the integrity of the U.S. markets requires that any exemption should be limited to circumstances where the characteristics of the offering indicate that the concerns expressed in Rules 10b–6, 10b–7, and 10b–13 are sufficiently attenuated. Neither of the proposed exemptions discussed below would have any effect on the continuing application of the general antifraud and antimanipulation provisions of the federal securities laws. [129]

Many of the exchange offers utilizing Rule 802 or Form F–12 will not be "distributions" as defined in Rule 10b–6, [130] and the persons participating in such offers will not be affected by the rule or the need to consider whether the proposed exemptions are available. Nevertheless, the Commission believes it is appropriate to exercise its authority under Rules 10b–6(h), 10b–7(o), and 10b–13(d) to propose a complete exemption for exchange offers pursuant to proposed Rule 802 on the presumption that such exchange offers for foreign

[123] Rule 10b–6 (17 CFR 240.10b–6), generally prohibits a person participating in certain offerings ("distributions") from, directly or indirectly, bidding for or purchasing, or inducing other persons to bid for or purchase, the securities in distribution, or any security of the same class and series, or any right to purchase such security ("related securities"), until the distribution has been completed. An exchange offer may involve a "distribution" as that term is defined in Rule 10b–6(c)(5). See *infra* fn 127. Moreover, Rule 10b–6 applies to both the securities offered and the securities sought in an exchange offer, but not to tender offers for cash.

[124] Rule 10b–7 (17 CFR 240.10b–7), prohibits a person from, directly or indirectly, stabilizing the price of a security to facilitate an offering of any security, unless such stabilization is effected in accordance with the rule's provisions.

[125] Rule 10b–13 (17 CFR 240.10b–13), prohibits a person who is making a cash tender offer or exchange offer from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to such offer, from the time of public announcement of the offer until its expiration, including any extensions thereof.

[126] MJDS, *supra* fn 54. See also Original MJDS Proposal, *supra* fn 69 at 32243–32244 and MJDS Reproposal *supra* fn 47 at 46295.

[127] The term "distribution" is defined in paragraph (c)(5) of Rule 10b–6 as an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. This definition is designed to apply the prohibitions of the rule to those situations where there would be an incentive to manipulate the security's price in order to facilitate the distribution.

[128] See Letter regarding International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd (September 29, 1987), (1987–1988) Fed. Sec. L. Rep. (CCH) ¶ 78,713.

[129] See *supra* fn 62.

[130] In determining whether a distribution is present, only the portion of the securities offered in the United States would be considered. However, for purposes of Rule 10b–6, the offeror would have to take into account all securities concurrently offered by the issuer in the United States, including securities offered pursuant to exemptions from registration under the Securities Act.

securities are unlikely to raise significant manipulative concerns.

The Commission also proposes to exempt from Rules 10b–6 and 10b–7 exchange offers made on Form F–12, subject to the following conditions: (1) The issuer of the foreign securities in distribution has voting stock with an aggregate market value of at least $150 million held worldwide by persons that are not affiliates of the issuer; (2) in required proposed Form F–12 legends,[131] the registrant discloses, where such is the case, the possibility of, or the intent to make, bids or purchases outside the United States as permitted by the applicable laws and regulations of the governing foreign jurisdictions; (3) the registrant discloses in the United States information regarding such purchases to the extent such disclosure is made in a foreign jurisdiction; (4) any bids or purchases of the security by distribution participants are made on a "designated offshore securities market," as defined in Rule 902 under the Securities Act; [132] and (5) no bids or purchases of the offered securities are effected in the United States.

The Commission seeks commenters' views on the proposed exemptions. Specifically, should the issuer qualification of $150 million in voting securities be changed to equity with a "public float" [133] of $150 million; $75 million? With regard to the qualifying markets for such purchases, would it be more appropriate to limit the availability of the exemptions to purchases on "specified foreign securities markets," as defined in proposed Rule 3b–10 under the Exchange Act,[134] or markets located in countries with which the Commission has an MOU or other comparable information sharing agreement? [135] Finally, comment is requested concerning the role played by issuers and their affiliated purchasers in foreign exchange offers and whether it is appropriate to extend the proposed exemptions to them.[136]

Rule 10b–13 principally is intended to prevent the offeror from providing greater or different consideration to certain shareholders by purchasing their shares outside the offer, to the detriment of other shareholders who are limited to the terms of the offer. A number of foreign jurisdictions do not prohibit the offeror from purchasing or arranging to purchase the subject security during the offer, although some jurisdictions require the bidder to provide consideration to tendering shareholders that is equivalent to the higher of the offer price and the highest price paid to any person whose securities were purchased outside of the offer.[137]

Affording U.S. securityholders the opportunity to participate in cash tender offers and exchange offers that are primarily foreign in character appears to outweigh the benefits that would be derived from applying Rule 10b–13 to such offers. Accordingly, the Commission is proposing an exemption that would permit a bidder relying on proposed Rules 802, 14d–1(c) or13e–4(h) to conduct a cash tender offer or exchange offer [138] in the United States without complying with Rule 10b–13, subject to the following conditions: (1) Any purchases or arrangements to purchase the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), otherwise than pursuant to the tender or exchange offer are not made in the United States; (2) where such is the case, disclosure of the possibility of such purchases, or the intent to make such purchases, in accordance with the applicable laws and regulations of foreign jurisdictions, is included in any information legend required by Form 14D1C or Form 13E4H; and (3) the offeror discloses such purchases in the United States to the extent such disclosure is made in a foreign jurisdiction. The Commission solicits commenters' views on the proposed exemptions from Rules 10b–6, 10b–7, and 10b–13.[139]

IV. United Kingdom Exemptive Order

Over the past two years, the Commission and the Panel on Takeovers and Mergers (the "Panel") [140] have worked together to facilitate on a case-by-case basis takeover bids for U.K. chartered companies with U.S. securityholders in order to promote the equal treatment of all securityholders. This approach was undertaken by the Commission and the Panel in the Ford Motor Company Ltd. cash offer for Jaguar plc,[141] and most recently in the exchange offer by Manpower Inc. for the ordinary shares of Manpower plc.[142] The experience of these offers,[143] and a review by the Commission and the Panel have highlighted six principal points of potential conflicts between the City Code and the Williams Act: (1) The availability of withdrawal rights and the prompt purchase of tendered shares; (2) the equal treatment of all securityholders; (3) the timing of public announcements; (4) the use of guaranteed deliveries of target securities in U.S. tender offers; (5) the adequacy of the U.K. disclosure documents; and (6)

---

[131] See Part I, Item 2. to proposed Form F–12.

[132] 17 CFR 230.902(a).

[133] See Instruction 4 to proposed Form F–12.

[134] See Securities Exchange Act Release No. 28733 (January 3, 1991) (56 FR 820).

[135] See *supra* Section II.A.1.

[136] Limiting the exemption to persons other than the issuer and its affiliates would be consistent with prior Commission actions. *See, e.g.*, Letter regarding Application of Rules 10b–6, 10b–7, and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities (April 25, 1991).

[137] See City Code Rules 6.1 and 6.2 (1990) 2 Fin. Serv. Rep. (CCH Ltd.) E–10 at p. 140,402. *See also, e.g.*, Ontario Securities Act sections 93(5) and 93(6) and Ontario Securities Commission Policy Statement 9.3.

Persons whose shares are purchased in the market before payment is made in the offer, however, receive a consideration different from that received by tendering shareholders, even though they receive the same per share price. See Brief of the Securities and Exchange Commission, Amicus Curiae, *Texaco Inc.* v. *Pennzoil Inc.* (Supreme Court of Texas, July 22, 1987).

[138] An exchange offer conducted pursuant to proposed Rule13e–4(h) or proposed Rule 14d–1(c) (17 CFR 240.13e–4(h) and 240.14d–1(c)) may also be subject to Rule 10b–6, but would have the benefit of the proposed exemptions discussed above for offers made under Rule 802 or Form F–12.

[139] The Commission would continue to consider requests for individual exemptions in the context of tender and exchange offers that would not be covered by the proposed exemptions.

[140] Tender offers in the United Kingdom are regulated by the Panel, which is a non-statutory body sponsored by the Bank of England and the institutions using the International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd. ("ISE"). Both the ISE and the Panel's requirements are set forth in the City Code on Take-Overs and Mergers (the "City Code") (1990) 2 Fin. Serv. Rep. (CCH Ltd.), which states general principles for the regulation of takeovers conducted in the United Kingdom and the Republic of Ireland. The City Code is intended to be interpreted flexibly and is viewed as a codification of good standards of commercial behavior. The City Code applies to public and certain private companies, while the ISE disclosure requirements apply only to listed companies.

[141] Securities Exchange Act Release No. 27425 (Nov. 7, 1989).

[142] Letter Regarding Manpower plc and Manpower Inc. (February 15, 1991) ("Manpower"). The Manpower transaction included an exchange offer by a newly formed U.S. company for all the shares of a company chartered in the United Kingdom in order to change the domicile of the parent company. Approximately 75 percent of Manpower plc's ordinary shares were held in the United States and most of its executive offices and operations were in the United States, thus disqualifying the target from the status of a foreign private issuer. In the transaction, a single offer was extended to both U.S. and U.K. holders. While relief was granted from the withdrawal rights requirements following the offer going wholly unconditional, withdrawal rights were otherwise afforded in accordance with U.S. requirements, both with respect to U.S. and U.K. holders.

[143] See also In the Matter of Aktiebolaget Volvo and Procordia Aktiebolag, *supra* fn 66 (exchange and cash offers of Aktiebolaget Volvo, a Swedish company with shares traded on NASDAQ, and Procordia Aktiebolag, a company controlled by the Swedish government, for all shares of another Swedish company, Pharmacia Aktiebolag, a Swedish company reporting in the U.S. and affiliated with Volvo).

purchases outside the tender offer during the pendency of the offer. The Commission is proposing to formalize the accommodations arrived at in these six areas in order to facilitate concurrent jurisdiction of tender offers subject to both the City Code and the Williams Act.

In order to codify these accommodations as well as to alleviate the necessity of individual Commission orders, the Commission is considering the entry of an exemptive order that would permit third-party exchange and cash tender offers for U.K. target companies, that are subject to the City Code, to take advantage of certain limited exemptions from the requirements of the Williams Act. The proposed exemptive order would allow tender or exchange offers to proceed simultaneously in the United Kingdom and the United States on the same terms and in accordance with both the Williams Act and the City Code.[144]

The exemptive order would extend to tender offers for the securities of U.K. companies that meet the definition of foreign private issuer.[145] Comment is requested whether this test is appropriate, since it could encompass U.K. companies where a majority of the securities are held in the United States, but the other disqualifying factors in the definition of foreign private issuer contained in Rule 3b–4 of the Exchange Act are not present. Should the scope of the order instead be based upon a specified maximum level of U.S. ownership such as 40, 50, or 60 percent?

A. Withdrawal Rights and the Prompt Purchase of Tendered Shares

As highlighted by the Commission's previous exemptive orders, Williams Act requirements regarding withdrawal rights conflict with the City Code. Specifically, the Williams Act and Commission rules require that withdrawal rights be maintained throughout the entire length of a tender offer,[146] whereas withdrawal rights are generally made available under the City Code only after the expiration of 21 days following the first closing date of the initial offer, if the tender offer has not by such date become or been declared unconditional as to acceptances.[147]

The extension of withdrawal rights in the U.S. throughout the offer has the effect of preventing the bidder from purchasing shares until the expiration of the offer, regardless of the reasons for an extension.[148] The City Code, however, requires that an offer remain open for at least 14 days after going unconditional as to acceptances and that shares be immediately purchased once the offer goes wholly unconditional.[149] These requirements would thus create a conflict with the U.S. requirement that withdrawal rights be extended, and therefore the previously tendered shares could not be purchased, absent an exemption, so long as the offer remained open.

To alleviate the conflicts erected by the diverging regulatory schemes, the proposed order contemplates that bidders will proceed simultaneously in the United States and the United Kingdom, complying with the rules and regulations of the Williams Act, including the applicability of withdrawal rights, with respect to U.S. holders, and complying with the City Code with respect to U.K. holders. In order to coordinate the different parts of the offer, however, and to ensure that all holders are paid at the same time, the offer would be permitted to remain open both in the U.S. and U.K. after the offer is declared wholly unconditional in accordance with U.K. tender offer practice, without extension of withdrawal rights, provided that (1) all U.S. minimum time periods had been satisfied, including U.S. mandated extensions, and all conditions to the offer had been satisfied or waived,[150] (2) all previously tendered securities would be accepted[151] and promptly paid for;[152] and (3) all securities tendered thereafter are immediately accepted and promptly paid for by the bidder.

B. All Holders

The proposed order also would provide limited exemptive relief under the all-holders provisions of Rule 14d–10 and Rule 13e–4(f)(8) under the Exchange Act.[153] Pursuant to this relief, a bidder may divide the offer into two separate offers, as done in the *Ford/Jaguar* transaction, excluding U.S. holders from the U.K. portion and limiting the U.S. offer to U.S. persons. In the alternative, a bidder could conduct one offer open to all holders, but affording different withdrawal rights to U.S. and U.K. holders prior to going wholly unconditional.

C. Public Announcements

An additional regulatory conflict involves the City Code requirement that a bidder promptly make a brief public announcement of a possible offer under a number of circumstances, including where the target becomes subject to rumor or speculation following an approach by the bidder.[154] Under Rule 2.5 of the City Code, however, if the bidder has formed a firm intention to make an offer, it must make a detailed announcement of the terms of the offer. The bidder is then required to mail an offer document within 28 calendar days of such an announcement.[155] Rule 14d–2(b) under the Williams Act, on the other hand, requires that the requisite disclosure documents be published, sent or given to securityholder within five business days of the announcement of the material terms of the offer.[156] A

---

[144] Section 14(d)(8) (15 U.S.C. 78n(d)(8)) permits the Commission by rule or order to exempt from the provisions of section 14(d) transactions that are "not comprehended within the purposes of this subsection." In addition, the Commission is empowered to alter the requirements of specific provisions of the Williams Act by rule or order, such as withdrawal rights under section 14(d)(5) of the Exchange Act (15 U.S.C. 78n(d)(8)).

[145] *See supra* fn 85.

[146] *See* Section 14(d)(5) (15 U.S.C. 78n(d)(5)); Rule 14d–7 and Rule 13e–4(f)(2) (17 CFR 240.14d–7 and 240.13e–4(f)(2)).

[147] City Code Rule 34 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), M–13 at 140,961. Unconditional as to acceptances is normally achieved on receiving a sufficient number of tendered securities, when combined with securities already owned or to be purchased, constitute more than 50 percent of the aggregate number of outstanding shares. See City Code Rule 10 [1990] 2 Fin. Serv. Rep. (CCH Ltd.), C–1 at 140,581.

The City Code, though, would not preclude a bidder from voluntarily providing additional withdrawal rights.

[148] Rule 14d–7(a) and Rule 13e–4(f)(2) (17 CFR 240.14d–7(a) and 240.13e–4(f)(2)).

[149] City Code Rule 31.4 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), M–2 at 140,902.

[150] Bidders taking advantage of these procedures normally would include in the United States offer the same conditions to the offer as those contained in the United Kingdom offer, including the minimum condition, in order to eliminate any question of the bidder's entitlement to delay closing the U.S. offer during any extension of the U.K. offer.

[151] Subject to meeting valid tender offer regulations, including proration requirements in a partial offer.

[152] 17 CFR 240.14e–1(c). The Commission generally has looked to the clearance and payment practices of the target's home country in this respect. See *Pryor* v. *United States Steel Corp.*, 591 F.Supp. 942 (S.D.N.Y. 1984); and Securities Exchange Act Release No. 16384 (Nov. 29, 1979) (44 FR 70362).

[153] 17 CFR 240.14d–10 and 240.13e–4(f)(8).

[154] City Code Rules 2.2 and 2.5 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), D–3 at 140,302 and D–5 at 140,321–322.

[155] City Code Rule 30.1 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), M–6 at 140,922.

[156] 17 CFR 240.14d–2(b). The rule deems the offer to have commenced upon the public announcement of the identity of the bidder and target, the number of shares sought and the price or range of prices to be paid, unless the Schedule 14D–1 is filed and tender offer materials are disseminated within five business days or the bidder otherwise announces an intent not to proceed with the offer.

conflict would be created, though, since the brief announcement could, and the Rule 2.5 announcement in all likelihood would, trigger the requirements of Rule 14d–2(b).

The proposed order would permit bidders for a U.K. chartered foreign private issuer to delay filing a Schedule 14D–1 [157] with the Commission and disseminating the tender offer materials until the disclosure document is mailed or disseminated in the United Kingdom, so long as a public announcement is made in the United Kingdom and in the United States containing the information required by Rule 2.5(b) of the City Code within five business days of any announcement triggering Rule 14d–2(b).[158] In the case of registered exchange offerings, the announcement made in the United Kingdom would not constitute "gun jumping" [159] so long as the announcement contains no more information than is required by the Panel, and includes a statement that a registration statement regarding the securities is not yet effective, and securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective.[160]

D. Guaranteed Deliveries

The Williams Act permits a bidder to allow securityholders to tender their securities without the physical or book entry delivery of the securities, but with a guarantee of delivery of the tendered securities within a specified period of time. The Williams Act does not mandate the use of guaranteed delivery in a tender offer; rather, it is up to the bidder as to whether the procedure will be made available to securityholders. In the Ford/Jaguar transaction, at the request of the Panel, only holders of ADRs, and not U.S. residents who held the ordinary shares of Jaguar, were given the option of tendering pursuant to the guaranteed delivery procedure. After the initial offering period in Ford/Jaguar and after acceptance for payment under the simultaneous U.S. and U.K. tender offers, all holders of U.S. securities received the option of tendering pursuant to the guaranteed delivery procedures. This difference in treatment, during the initial offering period and prior to the acceptance for payment of the tendered securities, occurred due to the Panel's concern with double counting of securities.[161] The concern expressed by the Panel is based on the Panel's goal of requiring bidders to be as certain as possible that the offer not go wholly unconditional unless the bidder has secured legal control of the subject company.[162] The Panel has advised the Commission that in the ordinary course it does not expect tender offers made in reliance on the order to permit the use of guaranteed delivery procedures. Since an offer would remain open a minimum of 14 days following announcement that the offer has gone unconditional as to acceptances, institutions and other persons holding ordinary shares and ADRs in a fiduciary capacity should have adequate time to tender by physical or book entry delivery. Comment is requested whether the absence of guaranteed delivery procedures would cause undue hardship to U.S. securityholders, or disruption in the U.S. markets for the subject security.

E. Disclosure Documents

The Commission's staff has reviewed U.K. disclosure documents disseminated in connection with cash tender offers in the U.K. and has found that the disclosure documents used in the U.K. are substantially comparable so as to permit the acceptance of the disclosure documents in connection with a tender offer involving U.K. subject companies if extended to U.S. residents. In a sample of tender offers by U.K. and non-U.K. bidders for U.K. chartered companies subject to the City Code, the disclosure contained therein was substantially similar to that contained in U.S. offers and would generally meet the requirements of Schedules 14D–1 and 14D–9.[163] The proposed order would therefore specify that offering materials prepared in accordance with the requirements of the City Code would satisfy the requirements of Schedules 14D–1 and 14D–9. Such offering materials would be filed as an exhibit to, and incorporated by reference into, the Schedules 14D–1 and 14D–9, thereby eliminating the necessity of preparing two sets of offering materials. Comment is requested as to whether there are disclosure provisions that are not substantially comparable and consequently should be specifically addressed under the order.

F. Purchases Outside the Offer

Rule 10b–13 under the Exchange Act,[164] prohibits a person who is making a tender or exchange offer from purchasing or arranging to purchase, directly or indirectly, the securities that are the subject of a tender or exchange offer, or any security that is immediately convertible into or exchangeable for such security, otherwise than pursuant to the offer. The rule's prohibitions apply from the time of public announcement of the offer until such time as the offeror is required, pursuant to the terms of the offer, either to accept or reject the tendered securities.[165]

In contrast, the City Code does not prohibit purchases otherwise than pursuant to the terms of a tender or exchange offer by persons covered by Rule 10b–13 during the period between announcement of the offer and its termination. However, the City Code contains "best price" and other provisions that operate to provide protections similar to Rule 10b–13. General Principle No. 1 of the City Code requires that all shareholders of the same class be treated "similarly" by an offeror.[166] Additionally, City Code Rule 6.2(a) requires the offeror and persons "acting in concert" with the offeror, including U.K market maker affiliates of dealer-managers conducting concurrent U.S. and U.K tender offers,[167] who

---

[157] 17 CFR 240.14d–100.

[158] Rule 10b–13 (17 CFR 240.10b–13) would continue to apply from the initial public announcement of the offer in the United States and the United Kingdom.

[159] Section 5(c) of the Securities Act (15 U.S.C. 77e(c)) makes it unlawful for any person directly or indirectly to make use of any means or instruments of interstate commerce or of the mails to offer to sell a security unless a registration statement has been filed with the Commission as to such security.

[160] See generally Rule 134(b)(1) (17 CFR 230.134(b)(1)).

[161] The concern also reflected the City Code requirement that an offer be withdrawn unless within 60 days of posting, the offer becomes "unconditional as to acceptances."

[162] *Id.*, City Code Rule 10 at 140, 581.

[163] 17 CFR 240.14d–100 and 240.14d–101.

[164] 17 CFR 240.10b–13.

[165] See fn 125 and accompanying text. Rule 10b–13 supports the Exchange Act's "best price" provisions. See, *e.g.*, section 14(d)(7) of the Exchange Act (15 U.S.C. 78n(d)(7)), and Rules 14d–10(a)(2), 14e–1(b), and 13e–4(f)(8)(ii) (17 CFR 240.14d–10(a)(2), 240.14e–1(b), and 240.13e–4(f)(8)(ii)).

[166] City Code General Principle No. 1 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), B–1 at 140,261.

[167] Under the "acting in concert" presumptions set forth in the definitions section of the City Code, purchases by a market maker controlled by, controlling, or under common control with a dealer-manager or any other adviser to the bidder will be attributable to the bidder. City Code Definitions (1990) 2 Fin. Serv. Rep. (CCH Ltd.), C–1 at 140,263. City Code Rule 8 requires market makers controlled by, controlling, or under common control with the dealer-manager or any other adviser to the offeror to report each transaction in "relevant securities" (which includes securities that are the subject of an exchange offer for purposes of Rule 10b–13) to the Panel and the ISE by noon on the day following the transactions, unless the market maker has been recognized by the Panel as an "exempt market maker." City Code Rule 8 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), E–16 at 140,424. This disclosure is designed to provide a significant deterrent to manipulation and thus to provide protection to tendering securityholders.

purchase securities outside the offer and above the offer price, to increase immediately the offer price to the highest price paid for shares purchased outside the offer.[168] Moreover, the City Code requires any purchases by an offeror and certain other persons to be disclosed on a next-day basis.[169]

Strictly construed, where the dual offer structure is employed, Rule 10b–13 would prevent the acquisition of shares in the concurrent U.K. offer during the pendency of the U.S. offer.[170] As discussed above, Rule 10b–13 conflicts with City Code provisions that permit an offeror and certain other persons to purchase target securities during the offer. Moreover, Rule 10b–13 may interfere with purchases of target securities pursuant to the compulsory acquisition rules (clean-up merger rules) of the U.K.,[171] since the Rule 10b–13 period generally applies from the time of the public announcement of the offer until the expiration of the offer period, including any extensions thereof.[172] Finally, Rule 10b–13 may interfere with the normal U.K. practice of permitting a market maker affiliate of the dealer-manager to continue to act as a market maker with respect to the subject securities.[173]

[168] City Code Rule 6.2(a) (1990) 2 Fin. Serv. Rep. (CCH Ltd.), E–10 at 140,402. See also *supra* fn 165.

[169] City Code Rule 8 (1990) 2 Fin. Serv. Rep. (CCH Ltd.), E–10 at 140,402. The City Code recognizes a special category of market makers called "exempt market makers" whose activities would not trigger the "best price" provisions of the City Code.

[170] See, e.g., supra fn 141, where the Commission granted, among other things, Ford Motor Company Limited's request for an exemption from Rule 10b–13 to permit it to conduct a U.K. tender offer in accordance with the City Code during the pendency of its concurrent tender offers for Jaguar plc in the United States and the United Kingdom.

[171] Sections 428–430F of the U.K. Companies Act of 1985.

[172] See, e.g., Manpower *supra* fn 142. An accommodation was made between conflicting U.K and U.S. tender offer requirements to permit Manpower, among other things, to purchase ordinary shares and ADSs pursuant to the U.K. compulsory acquisition rules. As noted, the Manpower transaction was unusual in that the offeror was not a foreign private issuer within the meaning of Rule 3b–4 under the Exchange Act (17 CFR 240.3b–4). The availability of the proposed exemptive order would be limited to foreign private issuers.

[173] Rule 10b–13 has been interpreted to apply to the dealer-manager of a tender offer because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives. The dealer-manager is thus prohibited from, directly or indirectly, purchasing or making any arrangement to purchase the security subject to the tender offer during the pendency of the offer. Purchases of a market maker affiliate of the dealer-manager are indirect purchases by the dealer-manager. See, *e.g.*, Letter regarding S.G. Warburg Securities (November 9, 1989), (1990) Fed. Sec. L. Rep. (CCH) ¶79,411 at 77,159.

Accordingly, the Commission is requesting comment on its proposal to exempt offerors (and dealer-managers) from Rule 10b–13 to permit tender and exchange offers for foreign private issuers listed for trading on the ISE and subject to the City Code to proceed in the United States in accordance with the rules of the City Code. The proposed exemption would be conditioned on: (1) Disclosure in documents filed in the U.S. in connection with the offer, where such is the case, of the possibility of, or the intention to make, such purchases during the offer; (2) all such purchases being made outside the United States; and (3) an undertaking by the offeror to disclose in the United States information regarding any such purchases to the extent such disclosure is made pursuant to the City Code.

V. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 802 and Form F–12, and proposed amendments to Rules 13e–4, 14d–1 and 14e–2, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional tender and exchange offers and the registration system proposed in order to facilitate the inclusion of U.S. securityholders in such offers. The Commission requests that foreign regulators, foreign issuers, their counsel and auditors provide views and data as to the costs and benefits associated with multijurisdictional tender and exchange offers under current law as compared to the costs and benefits under the proposed system. The Commission is not aware of any additional costs that would result from the proposed rules and forms whose use would be entirely optional. In addition, because eligible issuers taking advantage of the rules and forms would avoid expenses associated with the preparation of more than one document, benefits are expected to result for such issuers.

VI. Regulatory Flexibility Certification

A Regulatory Flexibility Certification relating to proposed Rule 802, Form F–12, under the Securities Act of 1933, Form 13E4H and Form 14D1C under the Securities Exchange Act of 1934, and Rule 304 of the Trust Indenture Act of 1939, has been prepared in accordance with 5 U.S.C. 605(b).

A copy of the Regulatory Flexibility Certification is attached as appendix B or a copy may be obtained by contacting John C. Maguire, Esq., in the Office of Tender Offers, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VII. Request for Comments

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposals to foreign issuers, foreign issuers who are reporting companies with the Commission, registrants and the marketplace at large. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[174] The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–18–91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

VIII. Statutory Basis of Rule, Form Proposals and Rule and Form Changes

These revisions are being proposed pursuant to sections 3(b), 7, 8, 10 and 19 of the Securities Act,[175] sections 12, 13, 14, and 23 of the Exchange Act,[176] and section 304 of the Trust Indenture Act.[177]

List of Subjects in 17 CFR Parts 200, 230, 239, 240, and 260

Authority delegations, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

[174] 15 U.S.C. 78w(a)(2).

[175] 15 U.S.C. 77c, 77g, 77h, 77j and 77s.

[176] 15 U.S.C. 78*l*, 78m, 78n, and 78w.

[177] 15 U.S.C. 77ddd.

IX. Text of Rules, Form Proposals and Rule and Form Changes

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, Subpart A continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 200.30–1 to add paragraph (f)(15) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(f) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(15) To grant exemptions from all or certain tender offer provisions of the Exchange Act (sections 14(d)(1) through 14(d)(7) (15 U.S.C. 78n(1)–(7)), Regulation 14D (§§ 240.14d–1 through 240.14d–10 of this chapter) and Schedules 14D–1, 14D–9, and Form 14D1C (§§ 240.14d–100, 240.14d–101, 240.14d–104 of this chapter) thereunder, and Rule 14e–1 of Regulation 14E (§ 240.14e–1 of this chapter)) pursuant to sections 14(d)(5) and 14(d)(8)(C) (15 U.S.C. 78n(d)(5) and 78(d)(8)(C)).

* * * * *

3. By revising paragraph (a)(36) of § 200.30–3 to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(36) To grant exemptions from Rule 13e–4 (§ 240.13e–4 of this chapter) pursuant to Rule 13e–4(i)(7) (§ 240.13e–4(i)(7) of this chapter).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

5. By revising paragraph (a) of § 230.174 to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under Section 4(3) of the Act.

* * * * *

(a) No prospectus need be delivered if the registration statement is on Form F–6 or F–12 (§ 239.36 or 44 of this chapter).

* * * * *

6. By adding § 230.440 to read as follows:

§ 230.440 Exemption from the requirement to provide consents for registration statements on Form F–12.

The written consent of an expert pursuant to section 7 of the Act shall not be required with respect to a registration statement on Form F–12 (§ 239.44 of this chapter), except with respect to a certification, report or valuation prepared solely in connection with such registration statement.

7. By revising § 230.464 to read as follows:

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S–8 and Form F–12, and on certain Forms S–3, S–4, F–3, and F–4.

Providing. That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S–8 (§ 239.16b of this chapter) or Form F–12 (§ 239.44 of this chapter); or on Form S–3 (§ 239.13 of this chapter) for a registration statement relating to a dividend or interest reinvestment plan; or on Form F–3 (§ 239.33 of this chapter) for a registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or in the case of a registration statement on Form S–4 (§ 239.25 of this chapter) that there is continued compliance with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form:

(a) The post-effective amendment shall become effective upon filing with the Commission; and

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S–8 or Form F–12 registration statement; or a Form S–3 registration statement relating to a dividend or interest reinvestment plan; or a Form F–3 registration statement relating to a transaction meeting the requirements specified in paragraph 4 of General Instruction I.B. of that Form; or a Form S–4 registration statement complying with General Instruction F of that Form and which has been amended to include or incorporate new full year financial statements or to comply with the provisions of section 10(a)(3) of the Act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

8. By adding § 230.469 to read as follows:

§ 230.469 Effectiveness of registration statements made on Form F–12.

(a) A registration statement on Form F–12 (§ 239.44 of this chapter) relating to securities offered in connection with an exchange offer or a business combination, shall become effective upon the filing of the Form F–12 with the Commission by the registrant.

(b) Notwithstanding the provisions of paragraph (a) of this section, a registration statement or post-effective amendment relating to an issue of debt securities shall not become effective until the provisions of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) have been complied with or an exemption from the provisions of that Act has been granted pursuant to section 304(d) (15 U.S.C. 77ddd(d)) under that Act.

9. By revising paragraph (d) of § 230.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form S–8 or Form F–12 (§ 239.16b or 44 of this chapter); on Forms S–3, F–2, F–3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

10. By adding § 230.802 to read as follows:

§ 230.802 Exemption for limited offerings, not exceeding $5,000,000, in connection with an exchange offer or business combination.

Preliminary Notes

1. The following § 230.802 relates solely to the application of section 5 of the Securities Act of 1933 (the "Act") (15 U.S.C. 77e) and not to the applicability of the antifraud, civil liability or other provisions of the federal securities laws.

2. In view of the objectives of this § 230.802 and the policies underlying the Act, § 230.802 is not available with respect to any transaction or series of transactions that, although in technical compliance with this rule, is part of a plan or scheme to evade the

registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in this § 230.802 obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) or other provisions of the federal securities laws, whenever such requirements are applicable.

4. Nothing in this § 230.802 obviates the need to comply with any applicable state law relating to the offer and sale of securities.

5. Attempted compliance with § 230.802 does not act as an exclusive election; a person making an offer or sale of securities or engaging in a business combination in reliance on § 230.802 may also claim the availability of any other applicable exemption from the registration requirements of the Act.

6. Section 230.802 provides an exemption only for the transaction in which the securities are exchanged by the issuer, not for the securities themselves. Securities of foreign private issuers, whether or not acquired in a transaction made in reliance on § 230.802, may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. The provisions of this rule shall not apply to exchange offers or business combinations by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*)

8. Offers and sales made outside the United States, will not affect a contemporaneous exchange offer made in compliance with this § 230.802 and will not be included in calculating the aggregate dollar amount of securities to be exchanged for securities held by U.S. holders in compliance with this § 230.802. A transaction made in compliance with § 230.802 will not be integrated with registered domestic offerings or domestic offerings that satisfy the requirements for an exemption from registration under the Act, including an exemption under other rules adopted pursuant to section 3(b) of the Act, even if undertaken contemporaneously. No adjustment to the aggregate offering amount shall be made for other offerings by an offeror made in reliance upon an exemption under other rules adopted pursuant to section 3(b) of the Act.

(a) *Definitions.* As used in Rule 802, the following terms shall have the meaning indicated.

(1) *Foreign private issuer* shall have the same meaning as set forth in Rule 405 of Regulation C (§ 230.405 of this chapter).

(2) *Foreign target company* as applied in § 230.802 shall mean any foreign private issuer whose securities are the subject of a tender or exchange offer ("subject securities").

(3) The term *U.S. holder*, as applied to security holders, shall mean any person whose address appears on the records of the issuer of the subject securities, of any voting trustee, depositary, share transfer agent, or any person acting on behalf of the issuer of the subject securities, as being located in the United States.

(4) *Home jurisdiction.* With respect to an exchange offer of securities made in reliance on § 230.802, the *home jurisdiction* shall mean the country of the foreign target company's organization, incorporation or chartering.

(5) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(6) *Business combination* is defined as a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of one or more of the participating companies.

(7) For purposes of § 230.802 *aggregate dollar amount* means the total dollar amount the offeror proposes to issue upon exchange for those securities of a single class held by U.S. holders, assuming that all the subject securities held in the United States are exchanged. The dollar amount of the securities being offered shall be calculated based upon the market value of the securities held by U.S. holders to be received by the registrant or cancelled in the exchange offer or business combination as established by the price of the securities of the same class, as determined in accordance with paragraph (c) of Rule 457 of the Act (17 CFR 230.457 of this chapter). If any securities being offered are valued in a foreign currency, the aggregate amount shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date the exchange offer is first published, sent or given to security holders.

(b) *Exemption.* Any exchange offer for a class of securities of a foreign private issuer, or any exchange of securities for the securities of a foreign private issuer in connection with any business combination, that satisfies the conditions of paragraphs (c), (d) and (e) of this § 230.802 shall be exempt from the registration provisions of section 5 of the Act (15 U.S.C. 77e) under section 3(b) of the Act (15 U.S.C. 77c(b)).

(c) *Conditions to be met—(1) Limitation on aggregate dollar amount.* As of the commencement of the exchange offer or business combination, the aggregate dollar amount of securities being offered pursuant to the tender offer or business combination shall not exceed $5,000,000.

(2) *Manner of the exchange offer.* Any exchange offer or business combination made in reliance on this § 230.802 must permit U.S. holders to participate in the offer on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the offer; *provided, however,* if the offer and sale of securities constituting the consideration offered in an exchange offer is required to be registered or qualified in a particular U.S. state or jurisdiction, and the offeror does not so register or qualify the offering, the offeror shall offer security holders in such state a cash alternative, if cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the offeror need not extend the offer to security holders in any state requiring registration or qualification.

(d) *Statements required in all offering circulars for securities of foreign issuers.* To the extent applicable, there shall be set forth on the outside cover page of any offering document(s) the following legends in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS EXCHANGE OFFER IS MADE FOR THE SECURITIES OF A FOREIGN PRIVATE ISSUER AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE SUBJECT COMPANY IS ORGANIZED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE SUBJECT COMPANY IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS ALSO SHOULD BE AWARE THAT THE BIDDER OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE SUBJECT COMPANY'S SECURITIES THAT ARE THE SUBJECT OF THE EXCHANGE OFFER OR OF THE SUBJECT COMPANY'S RELATED SECURITIES, OR OF THE BIDDER'S SECURITIES TO BE DISTRIBUTED OR OF THE BIDDER'S RELATED SECURITIES, DURING THE PERIOD OF THE EXCHANGE OFFER, AS PERMITTED BY THE HOME JURISDICTION'S LAWS, REGULATIONS OR POLICIES.

(e) *Dissemination of information.* All offerees that are U.S. holders shall be

provided with the same notices, documents or other information as that provided to the offerees in the home jurisdiction of the issuer at the same time that, or as soon as practicable after, such notices, documents or other information are made available to home jurisdiction offerees. If in lieu of delivering notices, documents, or other information to offerees in the home jurisdiction, information regarding the offering is being published or advertised in a home jurisdiction publication, then the issuer may at its option publish substantially equivalent information in the English language in a publication of general circulation in the United States or deliver a written copy of the home jurisdiction publication or advertisement to each offeree that is a U.S. holder at the same time that, or as soon as practicable after, the information becomes publicly available in the home jurisdiction of the issuer. If such notice document, or other information is furnished to the home jurisdiction offerees in a language other than English, then an English translation or summary of such notice, document, or other information shall be furnished to the offerees that are U.S. holders.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

11. The authority citation for part 239 is revised to read:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

12. By adding § 239.44 to read as follows:

Note: See appendix of this release for text of proposed Forms. The Forms do not appear in the Code of Federal Regulations.

§ 239.44 Form F–12, for registration under the Securities Act of 1933 of securities of certain foreign private issuers to be issued in exchange tender offers or business combinations.

(a) Eligibility Requirements for Use of Form F–12.—(1) *General.* Form F–12 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of one or more of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash, provided the conditions specified in paragraphs (b)–(f) of this section are met.

(2) Form F–12 shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(b) *Eligibility Requirements for Exchange Offers on Form F–12.* In the case of an exchange offer, Form F–12 is available if:

(1) The Registrant is a foreign private issuer;

(2) The Registrant is a Reporting Issuer, or has furnished on or before the date of filing of this Form F–12 an initial submission of information required by Rule 12g3–2(b) of the Securities Exchange Act of 1934 ("Exchange Act") (§ 240.12g3–2(b));

(3) Five percent or less of the class of securities that is the subject of the exchange offer are held by U.S. holders other than U.S. holders of more than 10 percent of the subject class; and

(4) The Registrant has a class of equity securities listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S (§ 230.902(a)(1) of this chapter) for the 36 months immediately preceding the filing of the registration statement on this Form, and is currently in compliance with the obligations arising from such listing; or such equity security is listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a 36 month operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing.

(5) If the Registrant is a successor Registrant surviving after a business combination, it shall be deemed to meet the eligibility requirements of the Form if the successor Registrant has had a class of equity securities listed on a designated offshore securities market as defined in Rule 902(a)(1) of Regulation S, for a period of time that, when added separately to the time each predecessor company had been so listed at the time of the business combination, equals at least 36 months and is currently in compliance with the obligations arising from such listing; or the successor Registrant has had a class of equity securities listed on a designated offshore securities market since the business combination and has an operating history that when added separately to that of each predecessor company equals 36 months or more, and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that the listing or operating history of any predecessor company need not be combined with that of the successor Registrant for purposes of satisfying such 36 month listing and operating requirements if other predecessor companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on a pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing and operating history of the successor Registrant, each meet such listing or reporting requirements.

(c) *Eligibility Requirements for Business Combinations on Form F–12.* In the case of a business combination, Form F–12 is available if:

(1) Each company participating in the business combination, including the Registrant, is a foreign private issuer;

(2) The Registrant has made on or before the filing of this Form an initial submission of information required by Rule 12g3–2(b) of the Exchange Act;

(3) Five percent or less of the class of securities that is offered in the exchange offer by the Registrant is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, as measured upon the completion of the business combination; and

(4) Each company participating in the business combination other than the Registrant has a class of its equity securities listed on a designated offshore securities market for the 36 months immediately preceding the filing of this Form and is currently in compliance with the obligations arising from such listing; or if one or more participating companies has not been listed on a designated offshore securities market for 36 months immediately prior to the offer, the Registrant may nevertheless use Form F–12 if such participating company or companies has a class of equity securities currently listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a three year operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that a participating company shall not be required to meet such listing or reporting requirements if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the Registrant, as measured based on a pro forma combination of such participating companies' most recently completed fiscal years, when combined with the

listing and operating history of the successor Registrant, each meet such listing or reporting requirements.

(d) *Equal treatment of security holders.* Form F–12 shall only be available with respect to exchange offers and business combinations in which U.S. holders participate on terms not less favorable then those offered any other holder of the same class of securities that is the subject of the exchange offer or business combination. If the offer and sale of securities constituting the consideration offered in an exchange offer is prohibited by the appropriate authority of a state after a good faith effort by the offeror to register or qualify the offer and sale of such securities in such state or jurisdiction, the offeror shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the offeror need not extend the offer to security holders in any state requiring registration or qualification.

(e) *Incorporation by reference.* Information may be incorporated by reference into the Form F–12 that is permitted to be incorporated by the home jurisdiction or by the regulatory authority on whose designated offshore securities market the class of equity securities of the offeror is listed. In addition, information contained in a filing with the Commission or information that has been furnished to the Commission pursuant to Rule 12g3–2(b) of the Exchange Act may be incorporated by reference to the Form F–12 and will in such case be deemed a part of such registration statement. Information incorporated by reference that has not already been filed or furnished to the Commission must be included in the Form F–12 as an exhibit.

(f) *Consent to service of process.* Registrants shall file a Form F–X (§ 239.41 of this chapter) with the Commission together with this Form.

Instructions for Form F–12

1. For purposes of this Form, *foreign private issuer* shall have the same meaning as set forth in Rule 405 (§ 230.405) under the Securities Act.

2. For purposes of this Form, *Reporting Issuer* means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 that: (i) Has a class of securities registered pursuant to section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and (ii) has filed all the materials required to be filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or such shorter period that the issuer was required to file such material).

3. For purposes of satisfying the 36 month listing and reporting requirement of this Form, *equity securities* shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the term *designated offshore securities market* shall have the same meaning as Rule 902(a)(1) of Regulation S under the Securities Act.

5. For purposes of this Form, the *public float of specified securities* shall mean only such securities held by persons other than U.S. holders of more than 10 percent of the issuer. The market value of the Registrant's outstanding equity securities shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

6. For purposes of this Form, the term *U.S. holder* shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, depositary, share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities, as being located in the United States. With respect to any exchange offer eligible to proceed in accordance with Rule 14d–1(c) or 13e–4(h) under the Exchange Act, U.S. holders, other than U.S. holders of more than 10 percent of the subject class, will be presumed to hold of record, as calculated in accordance with these instructions, five percent or less of the class of securities that are the subject of the exchange offer, if the foreign target company does not have an obligation to file reports with the Commission pursuant to section 13(a) or 15(d) of the Securities Act and has not furnished documents to the Commission pursuant to the exemption provided by Rule 12g3–2(b), unless the offeror has actual knowledge at the commencement of the exchange offer that the level of ownership of the class of securities that are the subject of the exchange offer by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, exceeds five percent.

7. If this Form is filed during the pendency of an ongoing third-party or issuer tender or exchange offer for securities of the class subject to the offer that was commenced on Schedule 13E–4, Schedule 14D–1, Form 13E4H, Form 14D1C and/or Form F–9M, the date for calculation of U.S. record ownership for purposes of this Form shall be the same as that date used by the initial offeror.

8. For purposes of this Form, the outstanding class of securities that is the subject of the exchange offer or business combination shall include American Depositary Receipts exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

9. For purposes of this Form, the calculation of securities held by U.S. holders shall be made as of the end of the subject company's last fiscal year or, if such fiscal year terminated within 180 days of the filing date, as of the end of the subject company's preceding fiscal year.

10. For purposes of this Form, the term *home jurisdiction* is defined as the jurisdiction of the foreign target company's incorporation, organization or chartering.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

14. By revising paragraphs (d)(1) and (d)(2) of § 240.12g3–2 to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–12);

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F–12) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

* * * * *

15. By adding § 240.12h–4 to read as follows:

§ 240.12h–4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F–12 under the Securities Act of 1933.

16. By amending § 240.13e–4 to redesignate paragraph (h) as (i) and to

add new paragraph (h) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) Any issuer tender offer, including any exchange offer, by a foreign private issuer, shall be exempt from the requirements imposed by Rule 13e–4 (§ 240.13e–4) and Schedule 13E–4 (§ 240.13e–101) thereunder, if 10 percent or less of the outstanding class of securities that is the subject of the tender offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, *provided that*:

(1) U.S. holders must participate in the offer on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the offer; unless:

(i) The offer and sale of securities constituting the consideration offered in the issuer tender offer is prohibited by the appropriate authority of a state after a good faith effort by the issuer to register or qualify the offer and sale of such securities in such state or jurisdiction, in which case the issuer shall offer security holders in such state a cash alternative if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the issuer need not extend the offer to security holders in any state requiring registration or qualification.

(ii) In the case of an issuer exchange offer exempt from registration under § 230.802 of the Securities Act, if the offer and sale of securities constituting the consideration offered is required to be registered or qualified and the issuer does not register or qualify the exchange offer, the issuer shall offer security holders in such state a cash alternative, if such consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the issuer need not extend the offer to security holders in any state requiring registration or qualification.

(iii) In the case of a cash tender offer, an issuer will not be required to extend an alternative non-cash consideration that has been offered security holders in the subject company's home jurisdiction, so long as the purpose of such alternative consideration is the deferral of income taxes.

(2) The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the class of securities to be acquired shall be furnished to the Commission on Form 13E4H (§ 240.13e–102) and disseminated to U.S. holders in accordance with the issuer's home jurisdiction's laws, regulations or policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer: *Provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to U.S. holders.

(3) For purposes of this paragraph (h):

(i) The calculation of the securities held by U.S. holders shall be determined by reference to the issuer's latest fiscal year end report filed or submitted to the Commission or, if such fiscal year end terminated within 180 days of the filing date, as of the end of the issuer's preceding fiscal year.

(ii) An issuer or affiliate may conclusively presume that the securities held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, does not exceed 10 percent of the outstanding securities if the issuer has not filed any reports pursuant to sections 13(a) or 15(d) of this Act nor furnished documents pursuant to the exemption provided by Rule 12g3–2(b) of this Act to the Commission, unless the issuer or affiliate otherwise knows at the commencement of the offer that the percentage of securities held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, exceeds the prescribed level.

(iii) For purposes of identifying the class of securities that is the subject of the offer, the class shall include American Depositary Shares exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

(iv) The term *home jurisdiction* shall mean the jurisdiction of the issuer's incorporation, organization or chartering.

(v) If a Form 13E4H is submitted during the pendency of an ongoing tender or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E–4, 14D–1, Forms 13E4H, 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

(vi) For purposes of this section, *U.S. holder* shall mean any person whose address appears on the records of the issuer of the subject securities, of any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

(4) This paragraph (h) shall not be used by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*)

17. By adding § 240.13e–102 to read as follows:

§ 240.13e–102 Form 13E4H. Tender offer submission pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

OMB APPROVAL

OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burden hours per response..... 1.0
U.S. Securities and Exchange Commission, Washington, DC 20549

Form 13E4H

Issuer Tender Offer Submission Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No._____)

_____

(Exact name of Issuer as specified in its charter)

_____

(Translation of Issuer's Name into English (if applicable))

_____

(Jurisdiction of Issuer's Incorporation or Organization)

_____

(Name(s) of Person(s) Submitting Form)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities) (if applicable)

_____

(Name, address (including zip code) and telephone number (including area code) of person authorized to receive notices and communications on behalf of the person(s) filing statement)

_____

(Date tender offer first published, sent or given to security holders)

General Instructions

I. Eligibility Requirements for Use of Form 13E4H

A. This Form shall be used for furnishing information pursuant to paragraph (h) of Rule 13e–4 under the Securities Exchange Act of 1934 ("Exchange Act"). Form 13E4H may be used by any issuer or affiliate if: (1) the issuer

or affiliate is a foreign private issuer; (2) the issuer is making a tender or exchange offer for the issuer's own securities; and (3) 10 percent or less of the outstanding class of such issuer's securities that is the subject of the tender offer or exchange offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class.

B. Any issuer or affiliate using this Form must permit security holders residing in the United States to participate on terms not less favorable than those offered any other holder of the class of securities that is the subject of the tender offer. See Rule 13e–4(h) under the Exchange Act.

C. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act.

D. If this Form is filed during the pendency of an ongoing tender or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E–4, 14D–1, Forms 13E4H, 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

II. Instructions for Submitting Form

A. Five copies of this Form and any amendment thereto (see Part I, Item 1.(b)), including all exhibits and any other paper or document filed as part of the Form, shall be furnished to the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

B. The original and at least one copy of this Form and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the class of securities to be acquired shall be furnished to the Commission on this Form and disseminated to security holders of the issuer residing in the United States in accordance with the issuer's home jurisdiction's laws, regulations or policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer: *provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to U.S. holders. A substantive summary, version or translation in English must be furnished of all exhibits.

D. The manually signed original of the Form or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

E. The issuer's attention is directed to Rules 10b–6 and 10b–7 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. [See Securities Exchange Act Release No. 34–xxxxx containing exemptions from Rules 10b–6, 10b–7 and 10b–13.]

PART I—INFORMATION TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Form shall be accompanied, if applicable, by the entire disclosure document or documents required to be delivered to holders of securities to be acquired by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the home jurisdiction in which the issuer is incorporated, organized or chartered, and any other foreign, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Form must include any documents incorporated by reference into such disclosure document(s) and not distributed to offeree's pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made by the issuer to a home jurisdiction document or documents shall be furnished to the Commission under cover of this Form, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the issuer registered pursuant to Section 12 of the Exchange Act have been or are to be offered or cancelled in the transaction, absent an exemption: (i) Securities shall be registered on the Commission's Form F–12, if permitted, and (ii) such securities shall be registered on other Commission prescribed forms, and (iii) the home jurisdiction offering document and the Commission prescribed form shall be included in Form 13E4H as an exhibit.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside cover page of any offering document(s) used pursuant to Rule 13e–4(h) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS TENDER OFFER IS MADE BY A FOREIGN PRIVATE ISSUER FOR ITS OWN SECURITIES, AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE ISSUER IS INCORPORATED OR ORGANIZED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE ISSUER IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS SHOULD BE AWARE THAT THE ISSUER OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE SECURITIES OF THE ISSUER SUBJECT TO THE OFFER, OR OF ITS RELATED SECURITIES, DURING THE PERIOD OF THE ISSUER TENDER OFFER, AS PERMITTED BY APPLICABLE FOREIGN LAWS OR PROVINCIAL LAWS OR REGULATIONS.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be furnished as part of the Form, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of the home jurisdiction. Exhibits shall be lettered or numbered appropriately for convenient reference.

(1) Furnish to the Commission any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the issuer in connection with the transaction, but need not be disseminated to shareholders.

(2) Furnish to the Commission copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Form pursuant to a power of attorney, manually signed copies of any such power of attorney shall be furnished to the Commission. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

PART III—SIGNATURES

A. The Form shall be signed by each person on whose behalf the Form is being furnished or its authorized representative. If the Form is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be furnished with the Form.

B. The name of each person who signs the Form shall be typed or printed beneath his signature.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

18. By amending § 240.14d–1 to redesignate paragraph (c) (proposed at 55 FR 46321, Nov. 2, 1990) as (d) and to add a new paragraph (c) and Notes thereto to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(c) Any tender offer, including any exchange offer, for the securities of a foreign private issuer shall be exempt from the requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and Rule 14e–1 of Regulation 14E under the Act, if 10 percent or less of the outstanding class of securities that is the subject of the tender offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, *provided that:*

(1) U.S. holders must participate in the offer on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the tender offer; unless

(i) The offer and sale of securities constituting the consideration offered in the tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state or jurisdiction, in which case the bidder shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the bidder need not extend the offer to security holders in any state requiring registration or qualification.

(ii) In the case of an exchange offer exempt from registration under Rule 802 of the Securities Act, if the offer and sale of securities constituting the consideration offered in the tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state or jurisdiction, in which case the bidder shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered to security holders, the bidder need not extend the offer to security holders in any state requiring registration or qualification.

(iii) In the case of a cash offer a bidder will not be required to extend an alternative non-cash consideration that has been offered security holders in the home jurisdiction, so long as the purpose of such alternative consideration is the deferral of income taxes.

(2) The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the outstanding class of securities to be acquired, in the case of a class of equity securities registered under section 12 of the Exchange Act, shall be furnished to the Commission on Form 14D1C (§ 240.14d–104) and disseminated to U.S. holders in accordance with the subject company's home jurisdiction's laws, regulations and policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer: *provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to the U.S. holders.

(3) For purposes of this paragraph (c):

(i) The calculation of the securities held by U.S. holders shall be determined by reference to the subject company's latest fiscal year end report filed or submitted to the Commission or, if such fiscal year end terminated within 180 days of the filing date, as of the end of the subject company's preceding fiscal year.

(ii) A bidder may conclusively presume that the securities held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, does not exceed 10 percent of the outstanding securities if the subject company has not filed any reports pursuant to section 13(a) or 15(d) of this Act nor furnished documents pursuant to the exemption provided by Rule 12g3–2(b) (§ 240.12g3–2(b)] of this Act to the Commission, unless the bidder otherwise knows at the commencement of the offer that the percentage of securities held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, exceeds the prescribed level.

(iii) For purposes of identifying the outstanding class of securities that is the subject of the offer, the class shall include American Depositary Shares exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

(iv) The term *home jurisdiction* shall mean the jurisdiction of the subject company's incorporation, organization or chartering.

(v) If a Form 14D1C is submitted during the pendency of an ongoing tender or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E–4, 14D–1, Forms 13E4H, 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

(vi) For purposes of this section, "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, of any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

(4) This paragraph (c) shall not be used by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

19. By adding § 240.14d–104 to read as follows:

§ 240.14d–104 Form 14D1C. Tender offer statement pursuant to section 14(d) of the Securities Exchange Act and § 240.14d–1(c) thereunder.

OMB APPROVAL

OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burden hours per response.....2.0
U.S. Securities and Exchange Commission, Washington, DC 20549

Form 14D1C

Tender Offer Form Pursuant to Rule 14d–1(C) Under the Securities Exchange Act of 1934

[Amendment No. _____]

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Name of Person(s) Furnishing Form)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of subject company)

(Date tender offer first published, sent or given to security holders)

General Instructions

I. Eligibility Requirements for Use of Form 14D1C

A. This Form shall be used for furnishing information pursuant to Rule 14d–1(c) under the Securities Exchange Act of 1934 ("Exchange Act"). Form 14D1C may be used by any person making a tender offer or exchange offer (the "bidder") for securities of any foreign private issuer, where 10 percent or less of the class of the securities sought in the tender offer or exchange offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class.

B. Form 14D1C also may be used by the subject company to respond to a tender offer or exchange offer if required to by the home jurisdiction's laws, regulations or policies.

C. Any bidder using this Form must permit security holders residing in the United States to participate on terms no less favorable than those offered any other holder of the class of securities that is the subject of the tender offer. See Rule 14d–1(c)(1) under the Exchange Act.

D. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act.

E. If this Form is filed during the pendency of an ongoing third-party or issuer tender offer or exchange offer for securities of the class subject to this offer that was commenced on Schedules 13E–4, 14D–1, Forms 13E4H, 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

F. This Form shall not be used to comply with the reporting requirements of Section 13(d) of the Exchange Act. Bidders using this Form are reminded of their obligation to file or update a Schedule 13D where required by Section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. Instructions for Submitting Form

A. Five copies of this Form and any amendment thereto (see Part I, Item 1.(b)), including all exhibits and any other paper or document furnished as part of the Form, shall be furnished to the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

B. The original and at least one copy of this Form and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. The entire disclosure document, registration statement and/or prospectus required to be furnished to holders of the outstanding class of securities to be acquired, shall be furnished to the Commission on Form 14D1C and disseminated to security holders of the subject company residing in the United States in accordance with the subject company's home jurisdiction's laws, regulations and policies, including any amendment or supplement; *provided, however,* that if dissemination solely by publication is permitted by the issuer's home jurisdiction, the tender offer shall be published in the United States in a manner reasonably calculated to inform U.S. holders of the offer: *provided, further,* that publication in all U.S. editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication. If such document, notice, summary publication, advertisement or other information is furnished to the home jurisdiction security holders in a language other than English, then an English translation of such document, notice or other information shall be furnished to the U.S. holders. A person supplying information under cover of this Form shall furnish whatever information the bidder is required to furnish to the Commission pursuant to the rules and regulations of the subject company. A substantive summary, version or translation in English must be furnished of all exhibits.

D. The manually signed original of the Form or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

E. The issuer's attention is directed to Rules 10b–6 and 10b–7 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. (See Securities Exchange Act Release No. 34–xxxxx containing exemptions from Rules 10b–6, 10b–7 and 10b–13.)

PART I—INFORMATION SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Form shall be accompanied, if applicable, by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the home jurisdiction's laws, regulations or policies governing the conduct of the tender offer. It shall include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be furnished to the Commission under the cover of this Form, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have been or are to be offered in the transaction, such securities shall be registered, absent an exemption, on forms promulgated by the Commission under the Securities Act of 1933 ("Securities Act") including, where available, the Commission's Form F–12 providing for inclusion in that registration statement of the home of jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside cover page of any offering document(s) used pursuant to Rule 14d–1(c) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS TENDER OFFER IS MADE FOR THE SECURITIES OF A FOREIGN PRIVATE ISSUER AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE SUBJECT COMPANY IS INCORPORATED, ORGANIZED OR CHARTERED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE SUBJECT COMPANY IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS SHOULD BE AWARE THAT THE BIDDER OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE ISSUER'S SECURITIES SUBJECT TO THE OFFER, OR OF THE ISSUER'S RELATED SECURITIES, DURING THE PERIOD OF THE TENDER OFFER, AS PERMITTED BY THE HOME JURISDICTION'S LAWS OR REGULATIONS.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be furnished as part of the Form, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of the home jurisdiction. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Furnish to the Commission any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) Furnish copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Form pursuant to a power of attorney, manually signed copies of any such power of attorney shall be furnished to the Commission.

PART III—SIGNATURES

A. The Form shall be signed by each person on whose behalf the Form is furnished or its authorized representative. If the Form is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be furnished with the Form.

B. The name and any title of each person who signs the Form shall be typed or printed beneath his signature.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

* * * * *

20. By adding new paragraph (c)(1) to § 240.14e–2 to read as follows:

§ 240.14e–2 Position of subject company with respect to a tender offer.

* * * * *

(c) * * *

(1) Any issuer, a class of securities of which is the subject of a tender offer furnished to the Commission on Form 14D1C and conducted in reliance upon and in conformity with Rule 14d–1(c) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of the home jurisdiction, in lieu of the statements called for by paragraph (a) of this section and Rule 14d–9 under the Act, shall furnish to the Commission on Form 14D1C the entire disclosure document(s) required to be furnished to holders of securities of the subject company by the laws, regulations and policies of the home jurisdiction and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in accordance with such laws, regulations and policies.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

21. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss.

22. By adding § 260.4d–10 to read as follows:

§ 260.4d–10 Exemption for Securities issued pursuant to Rule 802 of the Securities Act.

Any debt security, whether or not issued under an indenture, shall be exempt from the operation of the Act if issued pursuant to Rule 802 of the Securities Act (§ 230.802).

Dated: June 5, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Form Under the Securities Act of 1933

Form F–12

Note: These Forms are not contained in the Code of Federal Regulations.

OMB Approval

OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burden hours per response..... 2.0
U.S. Securities and Exchange Commission, Washington, DC 20549

Form F–12

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Country or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public_____.

This registration statement and any post-effective amendment thereto shall become effective in accordance with Rules 464 and 469.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

Check if appropriate:

[ ] An application for exemption under Section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act has been submitted to the Commission.

[ ] There are existing security holders under the indenture to which such application relates.

Calculation of Registration Fee *

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instruction II.G. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. Eligibility Requirements for Use of Form F–12

A. General

1. Form F–12 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

2. This Form shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

B. Eligibility Requirements for Exchange Offers

1. In the case of an exchange offer, Form F–12 is available if:

(a) the Registrant is a foreign private issuer;

(b) the Registrant is a Reporting Issuer, or has furnished on or before the filing of this Form F–12 an initial submission of information required by Rule 12g3–2(b) of the Securities Exchange Act of 1934 ("Exchange Act");

(c) five percent or less of the class of securities that is the subject of the exchange offer is held by U.S. holders, other than U.S. holders of more than 10 percent of the subject class; and

(d) the Registrant has a class of equity securities listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S for the 36 months immediately preceding the filing of the registration statement on this Form, and is currently in compliance with the obligations arising from such listing; or such equity

security is listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a 36 month operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing.

2. U.S. holders must participate in an exchange offer, registered on Form F–12, on terms not less favorable than those offered any other holder of the same class of securities that is the subject of the exchange offer. If the offer and sale of securities constituting the consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the offeror to register or qualify the offer and sale of such securities in such state, the offeror shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction. Where a cash consideration is not being offered, the offeror need not extend the offer to security holders in any state requiring registration or qualification.

3. If the Registrant is a successor Registrant surviving after a business combination, it shall be deemed to meet the eligibility requirements of the Form if the successor Registrant has had a class of equity securities listed on a designated offshore securities market as defined in Rule 902(a)(1) of Regulation S, for a period of time that, when added separately to the time each significant predecessor company had been so listed at the time of the business combination, equals at least 36 months and is currently in compliance with the obligations arising from such listing; or the successor registrant has had a class of equity securities listed on a designated offshore securities market since the business combination and has an operating history that when added separately to that of each significant predecessor company equals 36 months or more, and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that the listing or operating history of any predecessor company need not be combined with that of the successor Registrant for purposes of satisfying such 36 month listing and operating requirements if other predecessor companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on a pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing and operating history of the successor Registrant, each meet such listing or reporting requirements.

C. Eligibility Requirements for Business Combinations

1. In the case of a business combination, Form F–12 is available if:

(a) each company participating in the business combination, including the Registrant, is a foreign private issuer;

(b) the Registrant is a Reporting Issuer, or has furnished on or before the filing of this Form an initial submission of information required by Rule 12g3–2(b) of the Exchange Act;

(c) five percent or less of the class of securities that is being offered in the exchange offer by the Registrant is held by U.S. holders, other than by U.S. holders of more than 10 percent of the subject class, as measured upon completion of the business combination;

(d) each company participating in the business combination other than the successor Registrant has a class of its equity securities listed on a designated offshore securities market for the 36 months immediately preceding the filing of this Form and is currently in compliance with the obligations arising from such listing; or if one or more participating companies has not been listed on a designated offshore securities market for 36 months immediately prior to the offer, the Registrant may nevertheless use Form F–12 if such participating company or companies has a class of equity securities currently listed on a designated offshore securities market as set forth in Rule 902(a)(1) of Regulation S and has a three year operating history and a public float of $75 million or more, and is currently in compliance with the obligations arising from such listing; *provided, however,* that any participating company shall not be required to meet such listing or reporting history requirements if other participating companies whose assets and gross income, respectively, would contribute at least 80 percent of the total assets and gross income from continuing operations of the Registrant, as measured based on a pro forma combination of the participating companies' most recently completed fiscal years, each meet such listing or reporting requirements.

2. U.S. holders must participate in a business combination, registered on Form F–12, on terms not less favorable then those offered any other holder of the same class of securities that is the subject of the exchange offer or business combination. If the offer and sale of securities constituting the consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder or issuer to register or qualify the offer and sale of such securities in such state, the Registrant shall offer security holders in such state a cash alternative, if such cash consideration has been offered in any other jurisdiction.

Instructions for Form F–12

1. For purposes of this form, "foreign private issuer" shall have the same meaning as set forth in Rule 405 of Regulation C under the Securities Act.

2. For purposes of this Form, "Reporting Issuer" means an issuer other than an investment company registered or required to be registered under the Investment Company Act of 1940 that: (i) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act [15 U.S.C. § 78*l*(b) or § 78*l*(g)] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78*o*(d)]; and (ii) has filed all the materials required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act [15 U.S.C. § 78m(a) or 78*o*(d)] for a period of at least 12 months immediately preceding the commencement date of the offering being registered on this Form (or such shorter period that the issuer was required to file such material.

3. For purposes of satisfying the 36 month listing and reporting requirement of this Form, "equity securities" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the term "designated offshore securities market" shall have the same meaning as Rule 902(a)(1) of Regulation S under the Securities Act.

5. For purposes of this Form, the public float of specified securities shall mean only such securities held by persons other than U.S. holders of more than 10 percent of the issuer. The market value of the Registrant's outstanding equity securities shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

6. For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, depositary, share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities, as being located in the United States. With respect to any exchange offer eligible to proceed in accordance with Rule 14d–1(c) or 13e–4(h) under the Exchange Act, U.S. holders, other than U.S. holders of more than 10 percent of the subject class, will be presumed to hold of record, as calculated in accordance with these instructions, five percent or less of the class of securities that are the subject of the exchange offer, if the foreign target company does not have an obligation to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Securities Act and has not furnished documents to the Commission pursuant to the exemption provided by Rule 12g3–2(b), unless the offeror has actual knowledge at the commencement of the exchange offer that the level of ownership of the class of securities that are the subject of the exchange offer by U.S. holders, other than U.S. holders of more than 10 percent of the subject class, exceeds five percent.

7. If this Form is filed during the pendency of an ongoing tender or exchange offer for securities of the class subject to the offer that was commenced on Schedule 13E–4, Schedule 14D–1, Form 13E4H, Form 14D1C and/or Form F–12, the date for calculation of the securities held by U.S. holders for purposes of this Form shall be the same as that date used by the initial offeror.

8. For purposes of this Form, the outstanding class of securities that is the subject of the exchange offer or business combination shall include American

Depositary Shares exchangeable or convertible for such securities, but shall not otherwise include any securities that may be converted into or are exchangeable for the subject securities.

9. For purposes of this Form, the calculation of securities held by U.S. holders shall be made as of the end of the subject company's last fiscal year or, if such fiscal year terminated within 180 days of the filing date, as of the end of the subject company's preceding fiscal year.

10. For purposes of this Form, the term "home jurisdiction" is defined as the jurisdiction of the foreign target company's incorporation, organization or chartering.

II. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form, or unless any such rule refers specifically to this Form. Instead, the rules and regulations applicable in the foreign target company's home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations, other than Regulation C, shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

E. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act, a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

G. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the registrant or cancelled in the exchange offer from United States holders as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of the Registrant's outstanding securities shall be the average of the bid and asked prices of such stock, in the principal market for such securities as of a date within 30 days prior to the date of filing.

H. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States holders being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States holders in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of a predecessor's outstanding securities shall be the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 60 days prior to the date of filing.

I. If any part of the offering circular/prospectus filed as part of the registration statement or amendment is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or an amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

J. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

K. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

L. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the home jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to Instruction II.L. of Form F-12; File No. 33-[insert number of the registration statement]."

III. Compliance with Exchange Act and Auditor Independence and Reporting Requirements

A.Pursuant to Rule 12h–4 under the Exchange Act, a Registrant shall be exempt from reporting obligations under Section 15(d) of the Exchange Act if such reporting obligation would have arisen solely from registration of securities on this Form. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange Act and Rules 10b–6, 10b–7 and 10b–13 under the Exchange Act. [See Securities Exchange Act Release No. 34–xxxxx containing exemptions from Rules 10b–6, 10b–7 and 10b–13.]

B. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, shall not apply to auditor reports on all financial statements that are included in a registration statement under the Securities Act filed by the issuer on Form F–12.

C. Pursuant to Rule 13e–4(h) under the Exchange Act, the provisions of Rule 13e–4 are not applicable, and pursuant to Rule 14d–1(c) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E, may not be applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers or business combinations. Such transaction, however, is not exempt from the antifraud provisions of Sections 10(b), 13(e) or 14(e) of the Exchange Act or Rules 10b–5, 13e–4(b)(1) or 14e–3 thereunder.

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREE'S OR PURCHASERS

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the registrant pursuant to the laws of the home jurisdiction in which the foreign target company is incorporated, organized or chartered as well as, where applicable, the rules of any designated offshore securities market in such jurisdiction upon which the registrant has any class of equity securities listed. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such foreign target company's home jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities whose votes are being solicited in connection with the proposed business combination pursuant to the laws of the jurisdiction governing such solicitation including, where applicable, the rules of any designated offshore securities markets upon which the equity securities of the participating companies are listed. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of the foreign target company's home jurisdiction governing such solicitation as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into the home jurisdiction disclosure document and not required to be delivered to offerees or purchasers (in the case of an exchange offer) or security holders being solicited (in the case of a business combination) pursuant to the laws of such jurisdiction.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any "red herring" legend; (ii) any discussion of tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any underwriters not acting as underwriters in the United States or a description of the plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees or purchasers statutory rights under applicable securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THIS EXCHANGE OFFER IS MADE FOR THE SECURITIES OF A FOREIGN COMPANY AND WHILE THE OFFER IS SUBJECT TO DISCLOSURE REQUIREMENTS OF THE COUNTRY IN WHICH THE SUBJECT COMPANY IS ORGANIZED, INVESTORS SHOULD BE AWARE THAT THESE REQUIREMENTS ARE DIFFERENT FROM THOSE OF THE UNITED STATES. FINANCIAL STATEMENTS INCLUDED HEREIN, IF ANY, HAVE BEEN PREPARED IN ACCORDANCE WITH FOREIGN ACCOUNTING STANDARDS, AND ARE SUBJECT TO FOREIGN AUDITING AND AUDITOR INDEPENDENCE STANDARDS, AND THUS MAY NOT BE COMPARABLE TO FINANCIAL STATEMENTS OF UNITED STATES COMPANIES.

THE ENFORCEMENT BY INVESTORS OF CIVIL LIABILITIES UNDER THE FEDERAL SECURITIES LAWS MAY BE AFFECTED ADVERSELY BY THE FACT THAT THE SUBJECT COMPANY IS LOCATED IN A FOREIGN COUNTRY, AND THAT SOME OR ALL OF ITS OFFICERS AND DIRECTORS ARE RESIDENTS OF A FOREIGN COUNTRY.

INVESTORS ALSO SHOULD BE AWARE THAT THE REGISTRANT OR ITS AFFILIATES, DIRECTLY OR INDIRECTLY, MAY BID FOR OR MAKE PURCHASES OF THE SUBJECT COMPANY'S SECURITIES THAT ARE THE SUBJECT OF THE EXCHANGE OFFER OR OF THE SUBJECT COMPANY'S RELATED SECURITIES, OR OF THE REGISTRANT'S SECURITIES TO BE DISTRIBUTED OR OF THE REGISTRANT'S RELATED SECURITIES, DURING THE PERIOD OF THE EXCHANGE OFFER, AS PERMITTED BY THE HOME JURISDICTION'S LAWS REGULATIONS OR POLICIES.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. List of Documents Filed With the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement and all documents incorporated by reference.

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREE'S OR PURCHASERS

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the home jurisdiction of the subject issuer or, in the case of a business combination, in accordance with the requirements of the home jurisdiction of the companies involved in the transaction other than the registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) A copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) Copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person may be required. See Rules 436–440 of the Exchange Act.

However, this Form may not require experts, including auditors or counsel, to consent to the use of their material so long as it was not prepared directly for this registration statement or prospectus provided to security holders resident in the United States. See Rule 440 of the Exchange Act.

(5) If any name is signed to the registration statement pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(6) If applicable, a copy of any indenture relating to the registered securities and, if such indenture is to be qualified under the Trust Indenture Act of 1939 ("Trust Indenture Act"), a cross-reference sheet to the location in the indenture of Sections 310–318(a) of the Trust Indenture Act and a table of contents and, if any such indenture is to be qualified under the Trust Indenture Act, the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–2.

PART III—CONSENT TO SERVICE OF PROCESS AND SIGNATURES

1. Consent to Service of Process

(a) At the time of filing Form F–12, the Registrant shall furnish to the Commission on Form F–X a written consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to which the Registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered on Form F–12 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

(b) At the time of filing Form F–12, any trustee for which an exemption pursuant to Rule 4d–1 under the Trust Indenture Act is being applied by virtue of filing this Form shall furnish to the Commission on Form F–X a written consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

2. Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–12 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____.

Registrant _____
By (Signature and Title)_____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____
(Name and Title) _____
(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–12 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

Attachment B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: proposed Form F–12 under the Securities Act of 1933 (the "Securities Act"); proposed Forms 13E4H and Form 14D1C under the Securities Exchange Act of 1934 (the "Exchange Act"); proposed Rules 440, 469 and 802, and proposed changes to Rule 473 under the Securities Act; proposed Rule 12h–4, and proposed changes to Rules 12g3–2(b), 13e–4, 14d–1 under the Exchange Act; proposed changes to Rules 30–1 and 30–3 under the Commission's Rules of Practice; and proposed Rule 4d–10 under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The proposed rules, forms and proposed rule amendments are intended primarily to facilitate tender and exchange offers for securities of foreign issuers held by U.S. residents. The resulting reduction in the expense, time and effort of making such offerings will benefit U.S. securityholders, who are normally excluded from such offerings, and foreign entities that wish to extend these offers to U.S. securityholders.

Since the proposals are intended to facilitate international tender and exchange offers by minimizing the existing regulatory disincentives for extending these offers into the United States, the likelihood of such increased offerings in the United States significantly affecting a substantial number of small U.S. entities is expected to be minimal.

The proposed new rules, forms and proposed rule amendments are summarized in the attached memorandum.* That their primary effect is on foreign entities is apparent from such document.

Dated: June 5, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91–13760 Filed 6–13–91; 8:45 am]

BILLING CODE 8010–01–M

* The memorandum is not reproduced in this release.

17 CFR Parts 229, 240 and 249

[Release Nos. 33-6898; 34-29277; File No. S7-19-91; International Series Release No. 286]

RIN 3235-AD72

Proposed Amendments to Regulation S-K, Form 20-F, Proposed Form 40-F and Rule 12g3-2; Proposed New Forms for Furnishing Materials Pursuant to Rule 12g3-2(b)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms; proposed forms.

SUMMARY: The Securities and Exchange Commission (the "Commission") today is publishing for comment (a) proposed revisions to existing and proposed rules and forms which would require foreign private issuers to disclose the extent to which their equity securities are held by U.S. holders, and (b) proposed covering forms for furnishing information pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934. These proposals are part of the Commission's proposals relating to cross-border tender and exchange offers and would facilitate access to U.S. holder information and materials submitted under Rule 12g3-2(b).

DATES: Comments should be received on or before September 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-19-91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Paul M. Dudek at (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Proposed Amendments to Form 20-F, Proposed Form 40-F, Rule 12g3-2 and Regulation S-K to Require Disclosure of U.S. Holder Information

As part of the Commission's proposals relating to cross-border tender and exchange offers,[1] the Commission is proposing amendments to Item 5 of Form 20-F,[2] General Instruction B to proposed Form 40-F,[3] Rule 12g3-2 [4] under the Securities Exchange Act of 1934 (the "Exchange Act") and Item 201 of Regulation S-K [5] which would require a foreign private issuer to disclose, in certain filings and submissions with the Commission, the number of U.S. holders of its equity securities and the percentage of its outstanding equity securities held by U.S. holders. The disclosure of U.S. holder information would permit current and prospective investors in equity securities of foreign private issuers and potential third party bidders for such securities to determine from publicly available documents whether tender and exchange offers relating to such securities could proceed under proposed cross-border tender and exchange offer regulations.

The proposed amendments to Form 20-F, proposed Form 40-F and Regulation S-K would identify the records to be checked to determine the number of U.S. holders. As is currently the case for initial submissions under Rule 12g3-2(b), the proposed amendments to Rule 12g3-2(b) would require an issuer to furnish the specified U.S. holder information only to the extent such information is known or can be obtained without unreasonable effort or expense. Comment is requested regarding whether U.S. holder information should be required to be provided in the manner proposed or in an alternative manner, whether other information would be more useful, and whether disclosure of that information under Rule 12g3-2(b) should be mandatory.

II. Proposed Forms for Rule 12g3-2(b) Submissions

The Commission is proposing to require that all submissions under Rule 12g3-2(b) be made under cover of one of two proposed new forms: Proposed Form 12-F for initial submissions under Rule 12g3-2(b), and proposed Form 12-FA for all other submissions under the rule. The proposed forms would implement a format in which the U.S. holder information furnished by foreign issuers would be easily identifiable and obtainable by investors and other third parties. Adoption of the forms should also result in more efficient processing of all submissions and faster and easier public access to the information furnished.[6] Notwithstanding the use of a form, submissions under Rule 12g3-2(b) would continue not to be deemed "filed" with the Commission or otherwise subject to section 18 of the Exchange Act.[7]

Comment is solicited regarding whether either initial submissions or subsequent submissions under Rule 12g3-2(b) should be required to be under the cover of a form, and what other information, if any, should be required to be provided on such forms. The Commission is proposing to make use of the forms mandatory for materials submitted after 90 days following adoption. Foreign issuers would be encouraged, however, to use the forms as soon as practicable following adoption.

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendments to Form 20-F, proposed Form 40-F, Rule 12g3-2 and Regulation S-K and the proposed forms under Rule 12g3-2(b), the Commission requests commenters to provide views and data as to the costs to issuers associated with compliance with such rules and forms as they presently exist as compared to such estimated costs under the proposed changes. The Commission also requests commenters to provide views regarding the costs and benefits of the proposed amendments and forms to investors and other third parties.

The proposed Forms 12-F and 12-FA are covering sheets which contain no substantive requirements (other than the provision of certain identifying information and certain information relating to the extent to which equity securities of the subject issuer are held by U.S. residents). Such forms may be easily produced and reproduced by issuers and others furnishing information. The proposed amendments to Rule 12g3-2 would require only that the issuer's file number and the U.S. holder information be furnished in addition to information already required.

The Commission does not expect that any significant additional costs would result from the proposals.

---

[1] See Securities Act Release No. 6897 (June 5, 1991).

[2] 17 CFR 249.220f.

[3] Proposed 17 CFR 249.240f, Securities Act Release No. 6879 (Oct. 22, 1990) (55 FR 45896).

[4] 17 CFR 240.12g3-2.

[5] 17 CFR 229.201, Market price of and dividends on the registrant's common equity and related stockholder matters.

[6] In recent years, the number of issuers claiming the Rule 12g3-2(b) exemption has increased markedly. From adoption in 1967 through the end of 1980, file numbers were assigned to 443 issuers. By contrast, 585 file numbers were assigned in the aggregate during 1989 and 1990 alone. Over 1,050 issuers are currently furnishing material to the Commission in order to maintain their exemptions under Rule 12g3-2(b).

[7] 15 U.S.C. 78r. See Rule 12g3-2(b)(4) (17 CFR 240.12g3-2(b)(4)).

IV. Request for Comments

Any interested persons wishing to submit written comments on the proposed amendments and forms are requested to do so.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that adoption of the proposed forms and proposed revisions to existing and proposed rules and forms will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as Appendix B.

VI. Statutory Basis for Proposals

Regulation S–K, Form 20–F and proposed Form 40–F are being proposed to be amended by the Commission pursuant to sections 7, 10 and 19 of the Securities Act of 1933 [8] and sections 12(b), 12(g), 13, 14, 15(d) and 23(a) of the Exchange Act.[9] Forms 12–F and 12–FA are being proposed by the Commission and Rule 12g3–2 is proposed to be amended by the Commission pursuant to Sections 12(g), 12(h) [10] and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78*o*, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By adding Instruction 6 to § 229.201 as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

Instructions to Item 201.

* * * * *

6. If the registrant is a foreign private issuer, for each class of equity securities of the issuer (whether or not registered or to be registered), state the approximate number, as of the most recent practicable date, of persons holding such securities (either directly or through voting trust certificates or depositary receipts) which are U.S. holders, and the percentage of all the outstanding securities of such class which as of such date was so held by U.S. holders. The term *U.S. holder* shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the issuer as being located in the United States.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

* * * * *

Section 240.12g3–2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77s(a).

4. By revising paragraphs (b)(1)(iii) and the second sentence and last sentence of paragraph (b)(4), and adding a new third sentence to paragraph (b)(4) of § 240.12g3–2 to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(b) * * *

(1) * * *

(iii) Shall furnish to the Commission, during each subsequent fiscal year:

(A) Whatever information is made public as described in paragraph (b)(1)(i)(A), (B) or (C) of this section promptly after such information is made or required to be made public as described therein, and

(B) Upon the submission pursuant to paragraph (b)(1)(iii)(A) of this section of materials which include the annual report (or other document) of such issuer which includes the audited financial statements of such issuer covering the prior fiscal year of such issuer, or within four months after the end of each fiscal year of the issuer if no such annual report (or other document) is required to be submitted pursuant to such paragraph, the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, and the amount and percentage of each class of outstanding equity securities held by residents of the United States.

* * * * *

(4) * * * Such information and documents shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Such information and documents shall be furnished under cover of Form 12–F (§ 249.212f of this chapter) in the case of an initial submission under paragraph (b)(1) of this section and under cover of Form 12–FA (§ 249.212fa of this chapter) in the case of all other submissions under paragraph (b)(1) of this section. * * * When a Commission file number is assigned to an issuer furnishing information under paragraph (b)(1) of this section, that file number shall appear on each form under cover of which any subsequent information relating to that issuer is furnished.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

6. By adding §§ 249.212f and 249.212fa to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 249.212f Form 12–F, for initial submissions of information pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934.

Form 12–F shall be used for initial submissions of information pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934.

§ 249.212fa Form 12–FA, for submissions of information pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 other than in connection with an initial submission.

Form 12–FA shall be used for submissions of information pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 other than in connection with an initial submission.

7. By revising the paragraph under Item 5 of Part I, and adding Instruction 3 to Item 5 of Part I, of Form 20–F (17 CFR 249.220f) to read as follows:

---

[8] 15 U.S.C. 77g, 77j and 77s.

[9] 15 U.S.C. 78*l*(b), 78*l*(g), 78m, 78n, 78*o*(d) and 78w(a).

[10] 15 U.S.C. 78*l*(h).

Note: Form 20–F does not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Part I

* * * * *

Item 5. Nature of Trading Market

As to each class of securities registered or to be registered, indicate briefly the nature and extent of the principal non-United States trading market for such securities, and also the nature of the trading market in the United States. State the high and low sales prices for the securities in both such markets for each full quarterly period within the two most recent fiscal years. For each class of the registrant's equity securities (whether or not registered or to be registered), state the approximate number, as of the most recent practicable date, of persons holding such securities (either directly or through voting trust certificates or depositary receipts) which are U.S. holders, and the percentage of all the outstanding securities of such class which as of such date was so held by U.S. holders.

Instructions

* * * * *

3. The term *U.S. holder* shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the issuer as being located in the United States.

* * * * *

8. By amending proposed Form 40–F (17 CFR 249.240f) to add paragraph 6 under B of the General Instructions to read as follows:

Note: Form 40–F does not appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on this Form

* * * * *

(6) State the approximate number, as of the most recent practicable date, of persons holding securities of the Registrant (either directly or through voting trust certificates or depositary receipts) which are U.S. holders, and the percentage of all the outstanding securities of such class which as of such date was so held by U.S. holders. The term *U.S. holder* shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the issuer as being located in the United States.

* * * * *

Dated: June 6, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Forms 12–F and 12–FA Under the Securities Exchange Act of 1934

Note: These forms do not appear in the Code of Federal Regulations.

OMB Approval

OMB Number:

Expires: Approval Pending

Estimated average burden hours per response.....

Securities and Exchange Commission, Washington, DC 20549

Form 12–F

Initial Submission of Information Pursuant to Rule 12g3–2(b) Under the Securities Exchange Act of 1934

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's name into English)

(Jurisdiction of issuer's incorporation or organization)

(Address and telephone number of Issuer's principal executive offices)

(Exact name of person furnishing information if other than Issuer)

(Address and telephone number of principal offices of person furnishing information if other than Issuer)

To the extent such information is known or can be obtained without unreasonable effort or expense, furnish the following information: (i) The number of holders of each class of equity securities resident in the United States; (ii) the amount of each class of outstanding equity securities held by such residents; (iii) the percentage of each class of outstanding equity securities held by such residents; (iv) the title of class(es) of securities as to which such information relates; and (v) the date as of which such information is provided.

(i) Number of holders resident in the United States	(ii) Amount held by such residents	(iii) Percentage held by such residents	(iv) Title of, class of securities	(v) Date of information

General Instructions

A. This Form shall be used by persons furnishing information pursuant to paragraphs (i), (ii) and (v) of Rule 12g3–2(b) under the Securities Exchange Act of 1934 in order to establish the exemption provided by Rule 12g3–2(b).

B. A person supplying information under cover of this Form shall furnish whatever information the issuer of the securities is required to furnish to the Commission pursuant to paragraphs (i), (ii) and (v) of Rule 12g3–2(b). Only one complete copy of any information or document need be furnished. Press releases and all other communications or materials distributed directly to holders of the subject securities shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared English translations, versions or summaries of them. If no English translations, versions or summaries have been prepared, a brief description in English of any such documents shall be furnished.

C. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Securities Exchange Act of 1934.

D. This Form and the accompanying information shall be delivered to the Filing Desk at the Commission's office in Washington, D.C.

Signature

The undersigned submits these materials in order to establish the exemption pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 in respect to the above named issuer.

Signature *

Date: _____

OMB Approval

OMB Number:

Expires: Approval Pending

Estimated average burden hours per response.....

* Print the name of the signing individual under his signature.

Securities and Exchange Commission, Washington, DC 20549

Form 12–FA

Submission of Information Pursuant to Rule 12g3–2(b) Under the Securities Exchange Act of 1934, Other Than in Connection With an Initial Submission

82–_____

(Issuer's file number)

Check Appropriate Box(es)

[ ] Annual Report (or other document) containing audited financial statements.

[ ] Proxy statement or other material distributed to security holders in connection with a meeting of security holders.

[ ] Other Information.

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's name into English)

If an annual report (or other document) containing audited financial statements for

the issuer's most recently ended fiscal year is furnished with this Form, then to the extent such information is known or can be obtained without unreasonable effort or expense, furnish the following information (see Instruction D below): (i) The number of holders of each class of equity securities resident in the United States; (ii) the amount of each class of outstanding equity securities held by such residents; (iii) the percentage of each class of outstanding equity securities held by such residents; (iv) the title of class(es) of securities as to which such information relates; and (v) the date as of which such information is provided.

(i) Number of holders resident in the United States	(ii) Amount held by such residents	(iii) Percentage held by such residents	(iv) Title of, class of securities	(v) Date of information

General Instructions

A. This Form shall be used for furnishing information pursuant to paragraphs (iii) and (iv) of Rule 12g3–2(b) under the Securities Exchange Act of 1934.

B. A person supplying information under cover of this Form shall furnish whatever information the issuer of the securities exempt under Rule 12g3–2(b) is required to furnish to the Commission pursuant to paragraphs (iii) and (iv) of Rule 12g3–2(b). Only one complete copy of any information or document need be furnished. Press releases and all other communications or materials distributed directly to security holders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared English translations, versions or summaries of them. If no English translations, versions or summaries have been prepared, a brief description in English of any such documents shall be furnished.

C. The information and documents furnished on this Form are not to be deemed "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Securities Exchange Act of 1934.

D. If a foreign private issuer is not required under Rule 12g3–2(b)(1)(iii) to furnish to the Commission an annual report (or other document) containing audited financial statements of the issuer, such issuer is required to provide the information requested above with respect to the extent to which its securities are held by U.S. residents within four months after the end of each fiscal year of such issuer.

E. This Form and the accompanying information shall be delivered to the Filing Desk at the Commission's offices in Washington, DC.

Appendix B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: proposed Form 12–F and Form 12–FA under the Securities Exchange Act of 1934 (the "Exchange Act"); proposed changes to Form 20–F and proposed Form 40–F under the Exchange Act; and proposed changes to Rule 12g3–2(b) under the Exchange Act and to Item 201 of Regulation S–K, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The proposed forms and proposed changes to existing and proposed forms and existing rules discussed below are intended primarily to implement proposals (the "Cross-Border Tender and Exchange Offer Proposal") to facilitate cross-border tender and exchange offers relating to securities of foreign issuers held by U.S. investors. These proposals are a companion to the Cross-Border Tender and Exchange Offer Proposal. The resulting reduction in the expense, time and effort of making such tender and exchange offers will benefit U.S. securityholders, who are normally excluded from such offerings, and foreign entities that wish to extend these offers to U.S. securityholders. Since the proposals are intended to facilitate cross-border tender and exchange offers by minimizing the existing regulatory disincentives for extending these offers into the United States, the likelihood of such increased offerings in the United States significantly affecting a substantial number of small U.S. entities is expected to be minimal.

In connection with this proposal, the Securities and Exchange Commission (the "Commission") also is proposing revisions to existing rules and new forms to provide that submissions under Rule 12g3–2(b) shall be under cover of one of two proposed forms. These revisions and forms would affect foreign entities submitting materials to the Commission under Rule 12g3–2(b) rather than U.S. entities. An expected result of adoption of the proposed forms and proposed changes to existing rules and forms is that foreign companies will disclose on at least an annual basis the number of U.S. holders of their equity securities and the percentage of holders of their equity securities who are U.S. holders. The resulting increase in information can be expected to increase the ease with which small U.S. entities acting as investors can obtain U.S. holder information and assess the potential of tender and exchange offers being made under the Cross-Border Tender and Exchange Offer Proposal. Since U.S. holdings of foreign equity securities are relatively small, however, the likelihood of such increased information significantly affecting a substantial number of small U.S. entities is minimized.

The proposed forms and the proposed amendments to an existing form, a proposed form and existing rules are summarized below. That their primary effect is on foreign entities is apparent from such summary. Thus, the Division of Corporation Finance recommends that a certification be signed stating that these proposed rules and form and proposed amendments will not have a significant economic impact on a substantial number of small U.S. entities.

The proposed forms and the proposed amendments to an existing form, a proposed form and existing rules are summarized in the attached memorandum.* That their primary effect is on foreign entities is apparent from such document.

Dated: June 6, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91–13889 Filed 6–13–91; 8:45 am]

BILLING CODE 8010–01–M

* **Note:** The above-referenced memorandum is not included in this release.

federal register

Friday
June 14, 1991

Part III

Environmental Protection Agency

Coastal Nonpoint Source Pollution Management Measures Guidance; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-7]

Coastal Nonpoint Source Pollution Management Measures Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and request for comment.

SUMMARY: Pursuant to section 6217(g)(3)(A) of the Coastal Zone Act Reauthorization Amendments of 1990. EPA has developed, and requests public comment on, proposed guidance specifying management measures for the control of nonpoint sources that cause coastal water pollution. This guidance includes measures to control nonpoint source pollution from the following sources: Agriculture, silviculture, urban (including construction activities), hydromodification, and marinas. EPA has prepared the guidance in consultation with State and Federal agencies.

The purpose of this guidance is to provide a basis for the development of state coastal nonpoint pollution control programs by states with approved coastal zone management programs as required by section 6217(a). In addition to other requirements, section 6217(b) requires that these programs provide for the implementation, at a minimum, of management measures in conformity with the section 6217(g) guidance. The new coastal nonpoint pollution control programs will be implemented through existing state coastal zone management programs, administered by NOAA, and existing state nonpoint source control management programs, administered by EPA. EPA and NOAA are currently preparing to publish joint program development and approval guidance for section 6217 in draft form in August 1991. State coastal nonpoint pollution control programs must be submitted to EPA and NOAA for approval within 30 months after EPA issues section final 6217(g) guidance in May 1992.

EPA will consider comments on this proposed guidance and will issue final guidance in May 1992.

DATES: Written comments should be addressed the person listed directly below by October 15, 1991.

ADDRESSES: Comments should be sent to Steve Dressing, Assessment and Watershed Protection Division (WH-553), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of the complete draft may be obtained by August 2, 1991.These documents are also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, room 2404 (rear), 401 M St. SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. Copies of these documents are also available for review in the EPA Regional Office libraries.

FOR FURTHER INFORMATION CONTACT: Dov Weitman or Steve Dressing at (202) 382-7085.

SUPPLEMENTARY INFORMATION:

I. Background

A. Requirement for Coastal Nonpoint Pollution Control Programs

Congress enacted section 6217 of the Coastal Zone Reauthorization Amendments of 1990 in November 1990. This section requires all states with a federally approved coastal zone management program to develop, and submit to EPA and NOAA for approval, a Coastal Nonpoint Pollution Control Program. The statutory purpose of the program "shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities".

Under section 6217, State coastal nonpoint pollution control programs must contain a number of provisions in order to be approvable by EPA and NOAA. First, all State programs must provide for implementation of management measures "in conformity with" guidance developed by EPA in consultation with NOAA, the Fish and Wildlife Service, and other Federal agencies as required by section 6217(g). Congress required that proposed guidance be issued within six months after the statute was enacted (May 1991) and final guidance within eighteen months of enactment (May 1992).

In addition to providing for implementation of management measures in conformity with the 6217(g) guidance, section 6217 requires State programs to:

1. Identify land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of (a) coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, or (b) coastal waters that are threatened by reasonably foreseeable increases in pollution loadings form new or expanding sources;

2. Identify critical coastal areas adjacent to coastal waters identified under the preceding paragraph;

3. Implement additional management measures applicable to land uses and areas identified under paragraphs (1) and (2) above that are necessary to achieve and maintain applicable water quality standards and protect designated uses:

4. Provide technical assistance to local governments and the public to implement management measures;

5. Provide opportunities for public participation in all aspects of the program;

6. Establish mechanisms to improve coordination among State and local agencies and officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety; and

7. Propose to modify State coastal zone boundaries as necessary to implement NOAA recommendations under section 6217(e). (Section 6217(e) requires NOAA, in consultation with EPA, to evaluate the landward coastal zone boundary of each coastal State to determine whether it extends inland sufficiently to control land and water uses that have a significant impact on coastal waters of the state and to recommend boundary modifications as necessary.)

In addition to the provisions of section 6217, the Coastal Zone Act Reauthorization Amendments of 1990 amends section 306 of the Coastal Zone Management Act to require that, before approving a coastal zone management program submitted by a coastal State, NOAA shall find that: "* * * the management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 * * *".

Within 30 months after EPA's issuance of management measures guidance in May, 1992, States are required to submit to NOAA and EPA their coastal nonpoint pollution control programs for review. EPA and NOAA are currently in the process of drafting program development and approval guidance in order to assist States in developing and implementing the coastal nonpoint pollution control programs. EPA and NOAA plan to issue draft program approval guidance in August 1991 and final guidance in May 1992.

B. Management Measures Guidance

Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 requires EPA to publish (and periodically revise thereafter), in consultation with NOAA, the Fish and Wildlife Service, and other Federal agencies, "guidance for specifying management measures for sources of nonpoint pollution in coastal waters." "Management measures" are defined as:

> Economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

The management measures guidance is to include, at a minimum, six elements set forth in section 6217(g)(2):

"(A) A description of a range of methods, measures, or practices, including structural or nonstructural controls and operation and maintenance procedures, that constitute each measure;

"(B) A description of the categories and subcategories of activities and locations for which each measure may be suitable;

"(C) An identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

"(D) Quantitative estimates of the pollution reduction effects and costs of the measures;

"(E) A description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

"(F) Any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality."

II. Scope of the Proposed Guidance—Categories of Nonprofit Sources Addressed

According to the legislative history (floor statement of Representative Gerry Studds, house sponsor of section 6217, as part of debate on Omnibus Reconciliation Bill, October 26, 1990), Congress is expecting that EPA, "* * * in developing its guidance, will concentrate on the large nonpoint sources that are widely recognized as major contributors of water pollution." Hence, EPA, in consultation with NOAA, the Fish and Wildlife Service, USDA, and a number of other federal agencies, has decided to focus on the major categories of nonpoint sources that impair or threaten coastal waters nationally as identified in State water quality reports required under section 305(b) of the Clean Water Act and State nonpoint source assessments required by section 319(a). The five major categories of nonpoint sources and subcategories for which management measures are specified are:

(1) *Agricultural runoff*: Erosion and Sediment control, confined animal production facilities, nutrient management, pesticide management, grazing management, and irrigation water management;

(2) *Urban runoff*: Pre-development and post-development controls in urban areas including erosion and sediment control on construction sites, highways, airports and septic systems;

(3) *Silvicultural runoff*: Forest road management, timber harvest planning and site preparation, and revegetation of disturbed areas;

(4) Hydromodification, dams and levees, and shoreline erosion control; and

(5) Marinas and recreational boating.

EPA has also included management measures that apply to multiple categories of nonpoint sources. These measures include protection of wetlands and riparian areas, and vegetative filter strips.

III. Approach Used to Develop Guidance

A. Process Used to Develop Proposed Guidance

EPA adopted a work group approach to develop the proposed guidance in order to address the broad requirements of the guidance and to draw upon technical expertise outside the agency. EPA convened workgroups for each of the five major pollutant source group categories. Each of these groups held several meetings to develop the guidance. Work groups members included representatives of EPA; NOAA; U.S. Department of Agriculture (Soil Conservation Service, Extension Service, and Forest Service); the U.S. Fish and Wildlife Service; and several other Federal agencies. Representatives of a number of State water quality and coastal zone management agencies also participated actively in these work groups.

B. Technical Approach Used to Develop Proposed Guidance

In developing this guidance on management measures, we have been guided by the knowledge that nonpoint source pollutants are transported via multiple environmental pathways, principally runoff, infiltration, and atmospheric deposition. Therefore, the management measures place high priority on preventing or reducing nonpoint source pollution at the source. Recognizing that it is not possible to rely solely on pollution prevention, we have also incorporated in the guidance management measures to intercept pollutants which leave the source either for treatment and release or for the purpose of permanently keeping them from reaching water resources.

In addition, this guidance adopts the approach, routinely used and recommended by nonpoint source technical experts, of specifying management measures in terms of management systems as opposed to focusing on individual practices. This approach is analogous to the use of treatment "trains", or series of treatment steps, in most point source wastewater treatment systems. This approach is reflected in the guidance in two ways; (1) The management measures are usually presented as systems, and (2) for those sources that generate pollutants from a number of somewhat separable activities or unit areas, the guidance includes management measures for each activity or area.

The management measures specified in the proposed guidance generally have the following characteristics:

- The measures reflect the greatest degree of pollutant reduction economically achievable. EPA has specified management measures in terms of particular systems of practices that are known to be highly effective and that can serve as a benchmark for the development of other approaches that provide equivalent or better pollutant reduction.
- The measures focus first on pollution prevention activities such as minimizing the application of nutrients and pesticides and minimizing soil erosion. These types of measures are often the most cost effective. The measures then specify pollution delivery reduction measures which intercept pollutants leaving the source by capturing the runoff or infiltrate.
- Whenever appropriate, the measures include consideration of nonpoint pollution of both ground water and surface water because of their interactions in the hydrologic cycle. In coastal areas, management practices that may contribute to ground-water contamination are of special concern because of the role ground water plays in recharging coastal waters. EPA plans to more closely examine the relationship between ground and surface water contamination in coastal areas during the coming year and address the

resulting information as appropriate in the guidance.

Due to the very tight timeframe provided by Congress to EPA to publish the proposed guidance, the proposed guidance contains only those limited data and information on pollutant reduction effects and costs of the management measures that were immediately available. EPA specifically solicits relevant data from the public. EPA will consider these and additional information regarding costs and pollutant reduction effects prior to publishing the final guidance.

The proposed guidance invites commenters to identify measures that they believe are or are not economically achievable and to suggest alternative methodologies that they believe would be useful in determining economic achievability. Finally, EPA has separately prepared a preliminary assessment of the benefit of implementing the management measures.

IV. Implementation of Proposed Management Measures

As described above in section I of this notice, States must develop Coastal Nonpoint Pollution Control Programs which "provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g) to protect coastal waters generally, * * *". States will implement the new programs through amendments to their existing State nonpoint source programs under section 319 of the Clean Water Act and their Coastal Zone Management programs.

EPA and NOAA are currently drafting State program approval guidance to assist States in developing their coastal programs. Issues to be addressed in this guidance include the following:

- Section 6217(b) requires State coastal nonpoint pollution control programs to be "in conformity with" the management measures specified by EPA in EPA's management measures guidance. The program guidance under development will define the degree of flexibility States will have in adopting management practices appropriate to their circumstances while remaining "in conformity with" the management measures specified by EPA.
- The program guidance will define the kinds of land uses and critical coastal areas that States must identify, and the additional management measures which States must implement, in order to comply with section 6217(b)'s requirement for a higher level of protection for particular coastal waters than that afforded generally by the management measures guidance.
- The guidance will provide States direction on whether the management measures will apply to applicable sources within all coastal watersheds or should instead be targeted to high priority sources, activities, or waters.
- The program guidance will provide direction to States on how best to integrate their nonpoint source programs under section 319 of the Clean Water Act with their coastal zone management programs, as well as with other EPA programs such as those developed under the Clean Water Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Safe Drinking Water Act, and with programs administered by other Federal agencies.

EPA and NOAA hope to issue draft guidance by August 1991, and will solicit public comment at that time.

V. Request for Comments

EPA is soliciting comments on the proposed guidance on management measures to control coastal nonpoint pollution. The Agency is soliciting additional information and supporting data on the measures specified in this guidance and on additional measures that may be as effective or more effective in controlling nonpoint source pollution. The following information is sought by EPA in preparing the final guidance:

1. Information on the activities and locations for which each measure may be suitable and information on factors which should be taken into account in adapting the measures to specific sites or locations;

2. Information on the pollutants that may or may not be controlled by the measures;

3. Data regarding the pollution reduction effects of the measures;

4. Data regarding the costs and cost-effectiveness of each measure;

5. Appropriate monitoring techniques for each resource category;

6. Monetary data on benefits of each measure; and

7. Information on opportunities for point/nonpoint source trading, including information on possible cost advantages of this approach in specific watersheds.

EPA also welcomes comments on the general approach used in the proposed guidance, including the level of detail used to describe management measures. EPA requests that commenters focus their comments upon the technical soundness of the proposed management measures guidance and reserve implementation-related considerations until the forthcoming state program approval guidance is published for public comment.

Lajuana S. Wilcher,

Assistant Administrator for Water.

[FR Doc. 91–13534 Filed 6–13–91; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
June 14, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

Implementation of Section 235(r) of the National Housing Act; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-91-1547; FR-2739-F-01]

Implementation of Section 235(r) of the National Housing Act

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

ACTION: Final rule.

SUMMARY: This rule implements section 235(r) of the National Housing Act as amended by section 125 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235) which was signed by the President on December 15, 1989 (Reform Act). Section 235(r), as amended, authorizes the Secretary to insure a mortgage, the proceeds of which are used to refinance a mortgage insured under section 235. Section 235(r)(7) provides that section 235(r) shall be implemented by the Secretary by a notice published in the **Federal Register**. However, since the implementation of section 235(r) requires amendments to the current regulations, HUD is implementing the program through a final rule by adding a new 24 CFR 235.4, "Refinancing under 235(r) of the National Housing Act" to subpart A of part 235. Appendix A to part 235, published with this final rule, contains the special requirements that must be met for eligibility of a mortgage to be insured under section 235(r), as well as identifying the provisions of 24 CFR part 235, subparts A, B, and G, that are applicable to Section 235(r) mortgages. The Appendix also contains the provisions which, together with the applicable sections of 24 CFR part 235, subpart C, constitute the new assistance payments contract for the mortgage insured under section 235(r). In addition, the direct endorsement program, whereby mortgagees approved for that program may process and underwrite mortgage loans, is extended in appendix A to part 235 to mortgages to be insured under section 235(r). Delegations of authority to execute specific documents on HUD's behalf in conjunction with mortgages to be insured under section 235(r) are also contained in appendix A to part 235.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Robert E. Falkenstein, Jr., Office of Insured Single Family Housing, Department of Housing and Urban Development, room 9270, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–2720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2502–0456.

Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided elsewhere in this document.

Background

Section 235 was added to the National Housing Act (Act) in 1968 (12 U.S.C. 1715z) and authorizes the Secretary to insure mortgages for the purpose of acquisition of housing by lower income families. In addition to insuring the mortgages, the Secretary was also authorized to enter into a contract with the mortgagee to make a portion of the mortgage payments on behalf of the mortgagor. The assistance payments are based on the lesser of:

(1) The difference between 20 percent (or 28 percent for contracts with an original term of ten years or less) of the homeowner's adjusted monthly income and the required monthly payments under the mortgage for principal, interest, taxes, insurance and mortgage insurance premium; and

(2) The difference between the required monthly payment under the mortgage for principal, interest and mortgage insurance premium and the monthly payment for principal and interest as if the mortgage bore a lower rate of interest, depending upon the date on which the mortgage was approved by the Secretary for insurance.

Many of the mortgages insured under section 235, which are still outstanding, were made during the high interest rate years of 1980, 1981 and 1982. The interest rates on those mortgages are between 11 and 17.5 percent. If those mortgages could be refinanced at the current lower interest rates, HUD may be able to save substantially in dollar outlays in assistance payments. However, until the enactment of section 235(r), mortgagors had very little incentive to agree to refinance their loans. The only incentive was the potential savings to them on the mortgage held by HUD to secure a repayment of the assistance payments received (recapture mortgage) when they dispose of the property to an ineligible purchaser. Under a refinancing mortgage at a lower interest rate, the mortgagor would receive less assistance on its behalf from HUD and, therefore, possibly owe HUD less at the time of disposition of the property. The amount of assistance to be repaid by the mortgagors is the lesser of the amount of assistance actually received, or 50 percent of the net appreciation in the property. Therefore, if the property does not appreciate in value, the mortgagors would not have to make any repayment. When this potential savings is measured against the costs (origination fees, discount and closing costs), trouble, and time to refinance, such savings would be a very limited inducement to mortgagors to undertake the refinancing.

In addition, mortgagees would not be interested in making the loans unless they are paid a discount. The mortgagors on mortgages insured under section 235 are low-income persons, who generally would not be able to afford closing costs, origination fees or discounts necessary to refinance. To a limited extent, closing costs, origination fees, and discounts could have been included in the mortgage amount in a refinancing under section 203 or 235, but the mortgagor may not have agreed to the inclusion of these costs since his debt would have been increased.

In the appropriations Act for the Departments of Veterans Affairs and Housing and Urban Development for the fiscal year ending September 30, 1990 (Pub. L. 101–144) signed by the President on November 9, 1989, a new subsection (r) was added to section 235 of the Act entitled Refinancing. The new subsection required the Secretary to periodically review each assistance payments contract to determine whether a refinancing was warranted. There were some defects in this legislation and, before it was implemented, subsection (r) was amended by the Reform Act.

Section 235(r) as Amended by the Reform Act

Section 235(r) authorizes the Secretary to insure a mortgage, the proceeds of which are used to refinance a mortgage insured under section 235, and contains the eligibility requirements for such refinancing mortgage. It further provides for assistance payments in connection with mortgages insured under section

235(r). In addition, the Secretary is authorized, and, to the extent provided in appropriation Acts, may pay to the mortgagor (1) an amount as an incentive to the mortgagor to refinance a mortgage insured under section 235 and (2) an amount for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs. To the extent that these amounts are not paid by the Secretary, the interest rate of the refinancing mortgage may be increased over the rate otherwise allowed by the Secretary to compensate the mortgagee for its payments to, or on behalf of, the mortgagor of these amounts. Since appropriation Acts have not provided any funds for the Secretary to make the payments specified in (1) and (2) above, the interest rate for the section 235(r) mortgages will be set initially at an amount to compensate the mortgagees for making these payments. After the period of the loan required to repay the mortgagee for making these payments, which period cannot exceed 60 months, then the interest rate will decrease to the market rate. The 235(r) market rate is determined by using the current coupon rate (i.e. the maximum VA 30-year fixed rate less ½ percent) on Government National Mortgage Association Mortgage-Backed Securities (GNMA's MBS) scheduled for 60 day delivery shown on the Telerate Systems' Mortgage Service page 7105, or successor, at the market's closing on the date of application plus an additional one-half of one percent (½%). In the event that the price discount on the current coupon exceeds 2 points, the market rate will be the next higher GNMA coupon rate (not exceeding par), as shown on page 7105 of the Telerate Service, plus an additional one-half of one percent (½%). The market rate will remain in effect for the remainder of the mortgage term.

Direct Endorsement

It has been administratively determined that mortgages to be insured under section 235(r) should be eligible for processing and underwriting by mortgagees who are approved for the direct endorsement program under 24 CFR 200.164. However, under 24 CFR 200.163(a)(I) mortgages insured under section 235 are not presently eligible for processing under the direct endorsement program. Therefore, appendix 235, implementing the provisions of subsection (r), also contains authority for mortgages to be insured under this subsection to be processed through the direct endorsement program. There are certain requirements in the direct endorsement program which are not applicable to the properties securing mortgages under section 235(r), e.g., those requirements involving new construction. appendix 235 specifies which of the regulations under Direct Endorsement, 24 CFR 200.163–164a, apply to a mortgage insured under Section 235(r), and the certifications that the mortgagee and mortgagee's underwriter must make with respect to a 235(r) mortgage.

Further, appendix 235 contains authority for the direct endorsement mortgagees to sign, for and on behalf of HUD, the "Application for Homeownership Assistance under section 235 of the National Housing Act" (HUD–93100), approving the amount of assistance payment which HUD will make on behalf of the mortgagor under the 235(r) mortgage, if any. The direct endorsement mortgagee shall also have the authority to sign, for and on behalf of HUD, together with the mortgagor, an agreement subordinating the recapture mortgage, held by HUD for the purpose of securing repayment by the mortgagors of assistance payments made on their behalf, to the section 235(r) mortgage. This agreement shall also modify the recapture mortgage to include a reference to the new note being executed by the mortgagor to reflect assistance payments to be made in connection with the mortgage to be insured under section 235(r).

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, 451 Seventh Street SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. If the rule impacts on small entities at all, such impact will be positive as the notice is implementing another HUD-insured mortgage program.

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 the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under 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 involves the refinancing of mortgages insured under section 235 by mortgages to be insured under section 235(r). The purpose of the refinancing is to lower the interest rate on the mortgages so that the assistance payments being made by the Department will be reduced, thus saving the Department large cash outlays. The effect on families would be beneficial in that they would have a potential savings with respect to repayment of assistance payments to the Department and would also receive an incentive payment to refinance.

Information Collection Requirements

The collection of information requirements for this program were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, and were approved by OMB as Control No. 2502–0456. In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responces	Hours per response	Total hours
Form HUD-92900, Application for HUD/VA Insured Mortgage.			(1)	(1)		
Form HUD-92900-WS, Work Sheet			(2)	(2)		
Form HUD-93100, Application for Home ownership Assistance Under Section 235 of the National Housing Act.			(3)	(3)		
Form HUD-29004-G, Request for Verification of Employment.			(4)	(4)		
Mortgagors' Written Request to the Old Section 235 Servicing Mortgagee (Mortgagee Letter).	203.317 as incorporated by 235.201	36,000	1	36,000	.08	3040
Appendix 8 (HUD Handbook 4330.1 Rev. 2), Mortgagee Notice to Mortgagor. (In response to prepayment inquiry request for payoff or tender of prepayment in full).	203.317 as incorporated by 235.201	36,000	1	36,000	.08	3040
Preliminary or Final Payoff Statement (Mortgagee Letter).	203.317 as incorporated by 235.201	36,000	1	36,000	.03	1140
Appendix 44 (HUD Handbook 4330.1, Rev. 2) Notice to Mortgagors.	235.12	22,000	1	22,000	.02	440
Attachment 5 (Mortgagee Letter), Acknowledgment of Mortgagors.	235.345	22,000	1	22,000	.02	440
Attachments 7-A thru 7-D (Mortgagee Letter), Modification and Subordination Documents for Secretary-held Recapture Mortgages or Deeds of Trust.	235.12	20,000	1	20,000	.05	1000
Appendix 56 (HUD Handbook 4330.1, Rev. 2) Note	235.12	20,000	1	20,000	.02	400
Attachment 7-E (Mortgagee Letter), Mortgagee's Case Certification to a HUD Processed Case.	235.12	1,500	1	1,500	.02	30
Form HUD-59100, Mortgage Insurance Certificate (MIC).			(5)	(5)		
Attachments 10-A thru 10-D (Mortgagee Letter), Check Lists.	235.317 incorporated by 235.201	9,000	[4] 1	[4] 9,900	[4] .02	[4] 180
Form HUD-1, Settlement Statement			(6)	(6)		
Form HUD-27050-A, Termination of Mortgage Insurance.			(6)	(6)		
Form HUD-93114, Notice of Termination of 235 Assistance Payments.			(7)	(7)		
Form HUD-93102, Application (Bill) for 235 Assistance Payments.			(8)	(8)		
Form HUD-300, Monthly Summary of Assistance Payments.			(8)	(8)		
Attachment 6 (Mortgagee Letter), Mortgagee's Certification of the Date of Disbursement of the 235(r) Mortgage Proceeds.	235.345	22,000	1	22,000	.02	440
Total burden					10,150	

[1] Approved under OMB 2502-0059.
[2] Approved under OMB 2505-0059.
[3] Approved under OMB 2505-0190.
[4] Voluntary on the part of the originating Mortgages.
[5] Approved under OMB 2502-0265.
[6] Approved under OMB 2502-0414.
[7] Approved under OMB 2502-0094.
[8] Approved under OMB 2502-0081.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Grant programs: housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements, Homeownership.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new § 235.4 is added to subpart A, to read as follows:

§ 235.4 Refinancing under section 235(r) of the National Housing Act.

Subparts A, B, C and G of part 235 apply to a refinancing mortgage insured under section 235(r) of the National Housing Act, except as these subparts are modified and supplemented by Appendix A to part 235. (Appendix A to part 235 appears at the end of this part.)

3. A new Appendix A to part 235 is added to read as follows:

Appendix A to Part 235—Refinancing Section 235(r)

This Appendix contains the requirements for insuring mortgages under section 235(r) of the Act. Mortgages to be insured under section 235(r) will be eligible for direct endorsement processing as well as regular HUD processing. The following requirements, contract rights and obligations apply to a mortgage to be insured under section 235(r) of the Act.

Part I Direct Endorsement

A. Programs Included Under the Direct Endorsement Programs

The regulations implementing the direct endorsement program are contained in 24 CFR 200.163 through 200.164a. 24 CFR 200.163(a)(1) specifies the single family programs which are eligible for processing under the direct endorsement program. Section 235(r) is hereby made an eligible program for direct endorsement processing.

B. Provisions of 24 CFR 200.163 Through 200.164a Which Do Not Apply to Mortgages Insured Under Section 235(r)

The properties, which are to be security for the section 235(r) mortgages, are (1) currently security for mortgages insured under section

235, and (2) are existing with no requirement for appraisals. In addition, the eligibility requirements for the mortgagors and the mortgages differ from the other programs under the Direct Endorsement program.

There are several provisions of 24 CFR 200.163 which do not apply to mortgages insured under section 235(r). The paragraphs of 24 CFR 200.163 which are not applicable to mortgages insured under section 235(r) are as follows:

Paragraph 3 of subsection (b), *Appraisal*
Paragraph 4 of subsection (b), *Mortgagor's income*
Paragraphs (i), (iv), (vi) (viii) through (x) of subsection (b)(5), *Submission for Endorsement*
Paragraphs (A) through (I) of subsection (b)(5)(xi), *Submission for Endorsement*
Paragraphs (1) through (11) of subsection (c), *Underwriter Certification*
Paragraphs (1) through (4) of subsection (d), *HUD/FHA Pre-Endorsement Review*

C. Special Requirements for Section 235(r)

In lieu of the following paragraphs which are eliminated by section B, above, the following provisions are applicable for mortgages insured under section 235(r):

(1) Paragraph (A) Through (I) of Subsection (b)(5)(xi) (Submission for Endorsement)

In lieu of the certifications required of the mortgagee by paragraphs A through I of 24 CFR 200.163(b)(5)(xi), the mortgagee shall give the following certifications:

(a) That the mortgage term does not exceed the unexpired term of the insured mortgage being refinanced.

(b) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which has at least ten years to run from the maturity of the mortgage.

(c) That the stated mortgage amount does not exceed the lesser of (i) the outstanding principal balance due on the mortgage being refinanced as shown on the amortization schedule without taking into account prepayments and delinquencies and (ii) the actual unpaid principal balance due on the mortgage being refinanced.

(d) That the mortgage satisfies the requirements of 24 CFR 235.22 (a), (b), (c) and (f).

(e) That the recapture second mortgage, if applicable, has been subordinated to the mortgage being submitted for insurance and that the recapture mortgage is a second lien; provided that in the case where there is a loan made, held or insured by a Federal, State or local governmental agency which was approved by the Secretary as a second lien and which has been subordinated to the mortgage being submitted for insurance, the recapture mortgage may be a third lien.

(f) That the interest rates on the mortgage meet the requirements contained in part II, B. (4) of this notice, and that the initial interest rate is at least one percent (1%) higher than the interest rate on the remaining term of the mortgage.

(g) That the period for repayment of the refinancing cost by the mortgagor shall not extend beyond that necessary for the mortgagee to recover the eligible refinancing costs, but in no event shall it exceed a period of 60 months from the date of the first monthly payment of principal and interest due under the mortgage to be insured.

(h) That the mortgagor has not received payment, nor have payments been made on his behalf, as described in part II, B. (4) for a five year period from the date of the first monthly payment to principal and interest which was due on the mortgage to be refinanced.

(2) Paragraphs (1) Through (11) of Subsection (c) (Underwriter Certification)

In lieu of the certifications required by the Underwriter under 24 CFR 200.163(c), the underwriter shall give the following certifications:

(a) That, in the event the mortgagor's portion of the monthly principal and interest payments on the mortgage submitted for insurance, increases by more that $50.00 over the mortgagor's payments on the mortgage being refinanced, (i) a mortgage credit analysis has been performed, (ii) the mortgagor's income is and will be adequate to meet his portion of the periodic payments required by the mortgage submitted for insurance in accordance with part II, B. (6)(b) herein, and (iii) the mortgagor has a general credit standing satisfactory to the Secretary as required by 24 CFR 203.34 incorporated by referenced by 24 CFR 235.1.

(b) That the mortgagor is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced and that the last recertification of the mortgagor was within the preceding twelve months prior to the application for the 235(r) mortgage.

(c) That the mortgagor is eligible to continue to receive assistance in connection with the 235(r) mortgage.

(d) That the monthly payments of principal and interest at the 235(r) interest rate on the mortgage submitted for insurance are less than the monthly payments of principal and interest on the mortgage being refinanced.

(e) That the property which is security for the mortgage is occupied by the mortgagor.

(f) That the computation of the amount of assistance payments which the Secretary will pay on behalf of the mortgagor was computed in accordance with the formula contained in part IV, B. of this notice.

(g) That the mortgagors agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(3) Paragraphs (1) Through (4) of Subsection (d) (HUD/FHA Pre-Endorsement Review)

In lieu of the review and determinations to be made of loan documents by HUD as provided in 24 CFR 200.163(d), upon submission by an approved mortgagee of the documents required by 24 CFR 200.163 (b) and (c), as modified by this notice, HUD/FHA will review the loan documents to determine:

(a) That the mortgage is executed on a form which meets the requirements of the Secretary.

(b) That the mortgage maturity meets the requirements of part II, B. (3) of this notice.

(c) That the stated mortgage amount does not exceed the maximum dollar limitation under part II, B. (2) hereunder.

(d) That the mortgage interest rates meet the requirements of part II, B. (4) of this notice.

(4) References to 24 CFR 200.163 (b) and (c)

For the purposes of section 235(r) mortgages, all references in 24 CFR 200.163 to paragraphs (b) and (c) shall mean (b) and (c), as modified by this appendix.

D. Authority To Sign

A direct endorsement mortgagee processing and underwriting a Section 235(r) mortgage shall have the authority to sign, for and on behalf of the Secretary, in accordance with procedures established by the Secretary, without further specific approval, the following documents:

(1) Approval of Amount of Assistance Payments

The Form HUD 93100, "Application for Homeownership Assistance under section 235 of the National Housing Act," which evidences a review of the information obtained from the mortgagor on the application, a determination of eligibility or ineligibility for assistance payments, and the amount of the assistance payments to which the mortgagor is entitled.

(2) Subordination and Modification Agreement

An agreement, which subordinates a recapture second mortgage or deed of trust (recapture mortgage) held by HUD in accordance with 24 CFR 235.12, to the lien of the mortgage being submitted for insurance so that the recapture mortgage will remain a second lien. If the recapture mortgage is a third lien following a second lien made, held or insured by a Federal, State or local governmental agency, and approved by the Secretary, the direct endorsement mortgagee may sign an agreement subordinating the recapture mortgage to third lien place. The agreement shall also contain a modification of the recapture mortgage to include a new note to be signed by the mortgagor securing repayment of the assistance to be paid under the mortgage to be insured under section 235(r).

Part II Eligibility Requirements of Mortgages

In accordance with the authority contained in section 235(r) of the Act, the Secretary may insure, under subpart A of part 235, any mortgage given to refinance an existing mortgage which is insured under section 235 of the National Housing Act. Except as provided in this part II, all of the provisions of subpart A shall apply to the insurance of a mortgage under section 235(r).

A. Applicable Sections of 24 CFR Part 235, Subpart A

The provisions of 24 CFR part 235, subpart A which apply to a mortgage insured under section 235(r) are the following:

Sec.
235.1 Cross-reference
235.3 Waiver
235.5 Definitions used in this subpart

Sec.
235.12 Recapture of assistance payments
235.22(a)–(c) and (f) Mortgage provisions
235.33 Mortgage lien
235.40 Late charge

B. Special Requirements

The refinancing mortgage must meet the following special requirements:

(1) First Lien

It must be a first lien on real estate held in fee simple, or on a leasehold under a lease (1) for not less than 99 years which is renewable, or (2) has a period of not less than ten years to run beyond the maturity date of the mortgage.

(2) Mortgage Amount

It must be in an amount not exceeding the lesser of (i) the outstanding principal balance due on the mortgage being refinanced as shown on the amortization schedule, not taking into account prepayments and delinquencies, and (ii) the actual unpaid balance due on the mortgage being refinanced.

(3) Maturity Date

It must have a maturity not to exceed the remaining term of the section 235 mortgage being refinanced. In the event that the remaining term is measured in years and months, the term for the refinancing mortgage shall be rounded down to the next whole year.

(4) Interest Rates

(a) *235(r) Interest Rate.* The 235(r) interest rate is determined by using the current coupon rate (i.e. the maximum VA 30-year fixed rate less ½ percent) on Government National Mortgage Association Mortgage-Backed Securities (GNMA's MBS) scheduled for 60 day delivery shown on the Telerate Systems' Mortgage Service page 7105, or successor, at the market's closing on the date of application plus an additional one-half of one percent (½%). In the event that the price discount on the current coupon exceeds 2 points, the market rate will be the next higher GNMA coupon rate (not exceeding par), as shown on page 7105 of the Telerate Service, plus an additional one-half of one percent (½%).

(b) *Initial interest rate.* (i) From the date of the execution of the mortgage note until the date set forth in the mortgage note, it shall bear an additional increment of interest so that the total interest for that period is the same as the interest rate shown on the mortgage being refinanced, in order for the mortgagee to recover its payment to, or on behalf of, the mortgagor of the refinancing costs described below:

(A) An amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under section 235;

(B) An amount, as approved by the Secretary, for costs incurred in connection with the refinancing, including but not limited to discounts, loan origination fees, and closing costs;

(C) Current interest and delinquent interest not to exceed two months, on the mortgage being refinanced;

(D) Prepaid interest on the mortgage to be insured but not to exceed a period of ten (10) days; and

(E) Any excess of the actual outstanding principal balance not including current or delinquent interest over and above the scheduled unpaid principal, not taking into account any prepayments or delinquencies, as shown on the amortization schedule for the mortgage being refinanced.

(ii) The initial interest rate must be at least one percent (1%) higher than the 235(r) interest rate which is described in subparagraph (a).

(5) Eligible Mortgagee

It shall have been made to, and held by, a mortgagee approved by the Secretary.

(6) Eligible Mortgagor

(a) It must be executed by a mortgagor who is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced.

(b) If the mortgage submitted for insurance requires an increase in the mortgagor's portion of the periodic payments due under the mortgage by more than $50.00 over the amount the mortgagor was paying on the mortgage being refinanced, then a mortgage credit analysis must be performed on the mortgagor who must establish that his income is or will be adequate to meet his portion of the periodic payment due under the new mortgage. Only that part of the mortgagor's income which can be expected to continue for approximately the first five years of the mortgage term will be considered effective income for the purpose of determining the adequacy of the mortgagor's income.

(c) Cooperative members, who are receiving assistance payments, which in all cases are based on the cooperative member's proportionate share of the obligation under the project mortgage, are not eligible for section 235(r) mortgages.

(d) If the property is subject to a recapture mortgage securing the payment to the Secretary of assistance payments made on behalf of the mortgagor, the mortgagor must agree to modify and subordinate such mortgage to the mortgage to be insured under section 235(r) in accordance with instructions of the Secretary.

(e) The mortgagor has not received payments for the costs of refinancing, nor have such payments been made on his behalf, as described in Part II, B. (4), for a period fo 60 months from the date of the first payment of principal and interest on the mortgage to be refinanced; provided, however, that if the mortgagor pays its own cost to refinance, then this prohibition will not apply.

(f) The mortgagor must be an occupant of the property securing the mortgage.

(7) Monthly Payments

It must have monthly principal and interest payments at the 235(r) interest rate which are less than the monthly payments of principal and interest on the mortgage being refinanced.

(8) Refinancing costs

The refinancing costs may include those costs specified in paragraph (4)(b)(i). The period during which the mortgagor is to repay at the initial interest rate the refinancing costs paid by the mortgagee shall not extend beyond that necessary for recovery of eligible costs, but in no event shall it exceed 60 months from the date of the first monthly payment of principal and interest on the mortgage to be insured.

Part III. Contract Rights and Obligations

The provisions of subpart B of title 24 of part 235 shall be applicable to mortgages insured in accordance with section 235(r) of the Act.

Part IV. Assistance Payments Contract

A. Contract for Assistance Payments

Title 24, part 235, subpart C shall constitute the contract between the mortgagee and the Secretary for assistance payments in connection with a mortgage insured under section 235(r) of the Act, as modified by this appendix. The assistance payments contract for the mortgage being refinanced shall be terminated on the day before the disbursement of the proceeds of the mortgage to be insured and no further assistance payments shall be made under such contract. The sections of subpart C which apply in connection with a mortgage insured under section 235(r) are the following:

Sec. 235.301 Definitions
Sec. 235.340 Time of Payments
Sec. 235.350 Mortgagor's Required Recertification
Sec. 235.355 Mortgagor's Optional Recertification
Sec. 235.360 Adjustment in assistance payments
Sec. 235.361 Recovery of assistance payments
Sec. 235.365 Mortgagee records
Sec. 235.370 Effect of assignment of mortgage with an assistance payment contract
Sec. 235.375 Termination, suspension or reinstatement of the assistance payments contract
Sec. 235.499 Effect of amendments

The sections cited above and the following additional provisions constitute the assistance payments contract for a mortgage insured under section 235(r).

B. Assistance Payments and Handling Charges

(1) The assistance payments on behalf of the mortgagor shall be the lesser of the following:

(a) The difference between 20 percent [or 28 percent in the case of contracts entered into for a ten year term (ten year contracts)] pursuant to the authority under section 235(c)(1) of the Act, as amended by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98–181) of the homeowner's adjusted monthly income and the required monthly payment under the mortgage for principal, interest, taxes, insurance, and mortgage insurance premium.

(b) The difference between the required monthly payment under the mortgage for principal, interest, and mortgage insurance premium and the monthly payment which would be required for principal and interest if

the mortgage bore the lower interest rate established by the Secretary and in effect at the time of the closing of the mortgage being refinanced and which is referred to as the "floor rate."

(2) The floor rates are determined by the date of the closing of the mortgage being refinanced.

As an example, the following chart contains floor rates. However, mortgagees must check the HUD Form 93100 for the mortgage being refinanced to obtain the floor rate for that mortgage, which rate is to be used to compute the formula contained in paragraph (1)(b).

Date of closing	Note rate (%)	Interest rate to compute second element of paragraph (1)(b) (%)
8/9/68–1/4/76	N/A	1
1/5/76–3/6/78	N/A/	5
3/7/78–3/8/81	N/A	4
On or after 3/9/81	13.50 or below	4
	13.75–14.00	4¾
	14.25–14.50	5⅛
	15.00	6
	15.50	6¾
	16	7¼
	16.50	8
	17.50	8

(3) In addition to the assistance payments referred to in paragraph (1), the mortgagee shall be entitled to the monthly payment of an amount the Secretary deems sufficient to reimburse the mortgagee for its expense in handling the mortgage.

(4) Special assessments levied by a governmental body are to be included under the term "taxes" as part of the monthly payment. However, ground rents, assessments of a homeowners' association or condominium association, and special assessments levied by persons or private organizations are not to be included.

C. Execution of Assistance Payment Contract

The issuance of a mortgage insurance certificate pursuant to section 235.1 et seq. shall also constitute the execution of the assistance payments contract with respect to the mortgage being insured.

D. Eligibility for Assistance Payments

(1) In order to be eligible for assistance payments, a homeowner shall:

(a) Be a mortgagor on a mortgage insured, or to be insured, under section 235(r);

(b) Shall have been entitled to and receiving assistance payments under the mortgage being refinanced; and

(c) According to the formulae contained under subparagraph (B) under this part, shall continue to be eligible for such payments under the 235(r) mortgage.

(2) The mortgagee, holding the mortgage being refinanced, must certify that the mortgagor is eligible for, and receiving, assistance payments under the mortgage being refinanced and that the last recertification by the mortgagor was within the preceding twelve months prior to the application for the section 235(r) mortgage. If the last recertification was not within that period, then the mortgagee will have to obtain a current recertification from the mortgagor for the purpose of determining whether the mortgagor remains eligible to continue receiving assistance payments under the mortgage being refinanced.

(3) In addition, the mortgagee originating the 235(r) mortgage must obtain a new certification from the mortgagor for eligibility for assistance payments under the 235(r) mortgage. For purposes of determining eligibility under the 235(r) mortgage, the mortgagor must certify as to occupancy, employment, family composition and income on a form prescribed by the Secretary.

(4) The mortgagor shall agree to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(5) Homeowners, who are cooperative members and have been receiving assistance payments under section 235, are not eligible for assistance payments in connection with section 235(r) since they are not eligible for a mortgage insured under that section.

E. Term of Assistance Payment Contract in Connection With Mortgages Insured Under Section 235(r) of the Act

(1) Existing Contracts With Original Terms in Excess of Ten Years

In cases where the existing contracts has an original term in excess of ten years, the term of the new assistance payment contract in connection with section 235(r) shall commence on the date of disbursement of the mortgage proceeds as certified by the mortgagee, and shall continue until the contract is terminated pursuant to 24 CFR 235.375.

(2) Existing Ten Year Contracts

(a) In cases of ten year contracts, the term of the new assistance payments contract in connection with section 235(r) shall commence on the date of the disbursement of the mortgage proceeds as certified by the mortgagee, and shall continue for the unexpired term of the ten year contract, or until such earlier time as the contract is otherwise terminated pursuant to 24 CFR 235.375. The mortgagor will acknowledge receipt of a notice containing the expiration date of the new assistance payment contract.

(b) If the Secretary determines that the mortgagor is unable, by reason of the new contract having reached its maturity to resume full payments due under the mortgage insured under section 235(r) of the Act, the Secretary will, to the extent of funds available pursuant to section 235(c)(3) of the Act, contract to make, and make, continued assistance payments on behalf of the mortgagor for such period as the Secretary determines to be appropriate.

F. Recapture of Assistance Payments

The mortgagor shall execute an agreement subordinating the recapture mortgage, if any, to the section 235(r) mortgage. The mortgagor shall also execute a new note for recapture of assistance payments, and amend the recapture mortgage to include in the principal balance, assistance payments made in connection with the mortgage insured under section 235(r).

Part V. Servicing Responsibilities

The provisions of subpart G of 24 CFR part 235 shall be applicable to mortgages insured under section 235(r).

Dated: June 10, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–14072 Filed 6–13–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Friday
June 14, 1991

Part V

Environmental Protection Agency

40 CFR 51, 52, and 60

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 60

[FRL-3963-8]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: The applicability of the new source requirements of title I of the Clean Air Act (CAA) to physical or operational changes at electric utility generating units is an issue of considerable interest at this time because of the recent passage of the 1990 Clean Air Act Amendments (CAAA). Many utilities will be undertaking major pollution control projects at their units in the next few years. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the new source review requirements of title I. In particular, New Source Review (NSR) provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments proposed today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements. At the same time, the applicability of existing new source regulations to modifications has been the source of two recent federal appellate decisions, *Wisconsin Electric Power Co.* v. *Reilly. (WEPCO)*, 893 F.2d 901 (7th Cir. 1990), and *Puerto Rican Cement Co.* v. *EPA*, 889 F.2d 292 (1st Cir. 1989). As a result, EPA is today proposing clarifying amendments to these regulations and confirming its policies regarding of some these provisions as they apply to utility projects pending adoption of the proposed amendments.

The EPA today proposes to adopt a broad NSR exclusion for utility pollution control projects and, until these proposed regulations are adopted in final form, to adhere to its policy that new source regulations already generally exclude coverage of pollution control projects undertaken at electric utility units. Similarly, EPA today proposes to adopt an "actual to future actual" methodology for determining whether all other nonroutine physical or operational changes at utilities (other than the replacement of a unit or addition of a new unit) are subject to new source review under either prevention of significant deterioration (PSD) or nonattainment provisions and to maintain in the interim that this methodology is applied where the unit has "begun normal operations." For those utility projects which undergo PSD new source review, today's notice proposes a presumption that for EPA-issued permits, "low-NOx burners" can satisfy the best available control technology (BACT) requirements.

In addition, EPA also proposes to modify its regulations implementing the modification provisions of the title I new source performance standards (NSPS) program to provide that a utility may use for its pre-change baseline the highest hourly emissions rate achievable at any time during the 5 years prior to the physical or operational change. The EPA also proposes to modify its regulations to reflect changes made by Congress in the 1990 Amendments to the applicability of new source requirements to clean coal technology (CCT) and repowering projects, and to "very clean" units.

DATES: *Comments.* Comments on the revisions proposed today must be received on or before August 19, 1991.

Public Hearing. A public hearing is scheduled for 10 a.m., July 19, 1991. The hearing may be canceled if no speakers have requested time to present their comments 15 days prior to the scheduled hearing date. Written comments in lieu of testimony are encouraged. For information about the hearing contact JoAnn Allman at (919) 541–5591.

ADDRESSES: Supporting information used in developing this proposed rule is contained in docket A–90–06. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., weekdays at EPA's Air Docket (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

The public hearing will be held at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Chebryll Edwards, New Source Review Section (MD–15), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, (919) 541–2343.

SUPPLEMENTARY INFORMATION:

I. Introduction

The EPA today proposes to amend its regulations implementing the various title I new source requirements governing physical or operational changes at electric utility generating units. Specifically, these proposed changes are being issued to clarify the coverage of the NSPS, PSD and nonattainment preconstruction review requirements of title I of the Clean Air Act to projects undertaken at electric utility steam generating units. [1]

The EPA proposes to amend the definition of "major modification" in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement or use at existing electric utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to a less polluting fuel where the primary purpose of the switch is the reduction of air pollutants) will or will not subject the source to preconstruction review. Specifically, EPA proposes in PSD and nonattainment areas to adopt a regulatory exclusion explicating its authority under the statutory definition of "modification" and confirming EPA's current practice that pollution control projects which "do not render the unit less environmentally beneficial" are not "physical or operational changes," and hence, are not "modifications" for the purposes of parts C and D of title I and are not "major modifications" for the purposes of EPA's regulations implementing those provisions. The EPA is today also proposing to amend its PSD and nonattainment new source review regulations (40 CFR parts 51 and 52) [2] as they apply to utilities to (1) clarify the NSR baseline for determining whether a proposed physical or operational change will subject a utility to the preconstruction review requirements of these provisions; (2) set forth an actual to future actual methodology for determining whether a physical or operational change is subject to NSR; (3) provide further clarification of the existing regulatory requirement that only those increases in emissions that actually result from the physical

[1] The proposed regulations define electric utility steam generating units as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW of electrical output to any utility power distribution system for sale. See, *e.g.*, proposed 40 CFR 51.165(xx).

[2] For the purposes of this notice, references to "new source review" (or "NSR") refer to the preconstruction review requirements of both part C (PSD) and part D (nonattainment) of the Clean Air Act, unless otherwise indicated.

change or change in the method of operation can be considered in determining whether the proposed change subjects the utility to NSR requirements; and (4) implement sections 409 and 415 of title IV of the Clean Air Act Amendments of 1990 which create special NSPS treatment for certain repowering projects and limited NSR exemptions for temporary and permanent CCT projects, and for certain "very clean" units. Finally, EPA is also proposing to amend its NSPS regulations (40 CFR part 60) to allow a utility to use as its pre-change baseline its highest hourly emissions rate achievable during the 5 years prior to the proposed physical or operational change. To the extent the proposed amendments implement existing EPA policies, EPA will continue to administer its regulations in a manner consistent with these policies pending adoption of the regulations proposed today. Portions of the preamble of today's proposal set forth EPA's present policies under its current regulations, and may be relied on as such pending final action on today's proposal.

Today's proposal addressing pollution control projects and other non-routine physical and operational changes at electric utility units is timely for several reasons. First, the 1990 Clean Air Act amendments establish, in title IV, a new control scheme for addressing the acid rain problem which focuses exclusively and immediately on utility power plants. Title IV will force most electric utility steam generating units to undertake pollution control projects and provides full flexibility to achieve compliance without a bias towards or against any particular pollution control method. Second, the Agency believes its extensive experience with other non-routine physical and operational changes at such units and the unique characteristics of the electric utility industry (e.g., the general similarity of equipment within the category and the extent of publicly available information) support a revision to the new source review applicability criteria for this source category. Further, while Congress did not make significant changes in the NSR and NSPS statutory language in 1990, the conference committee provided the following guidance to EPA in its Joint Explanatory Statement:

"[T]he deletion of most provisions relating to the WEPCO decision is not intended to affect or prejudice in any way the issues or resolution of the WEPCO matter. At the same time, the conferees urge a quick resolution of the WEPCO matter by EPA as appropriate."

Conference Comm., Joint Explanatory Statement of the Committee of the Conference to Accompany S. 1630, Rep. 101–952, 101st Cong., 2nd Sess. (1990) pp. 344–45. In passing title IV, Congress did not suspend any requirements of title I. However title I and title IV are clearly intended to work in concert, not conflict, and today's ruling is intended to ensure that harmony.

II. Background

A. The New Source Performance Standards, Prevention of Significant Deterioration and Nonattainment Programs of Title I

Title I of the Clean Air Act has three programs specifically designed to ensure that no new air pollution—whether from new sources or from modifications to existing sources—can be emitted unless the source complies with new source requirements.

The 1970 Clean Air Act required EPA to promulgate technology-based new source performance standards applicable to the construction or modification of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Clean Air Act ("CAA") Section 111(b)(1)(A), 42 U.S.C. 7411(b)(1)(A). The NSPS provisions were "designed to prevent new air pollution problems" by regulating newly-constructed sources and changes occurring at existing sources that result in emissions increases. See *National Asphalt Pavement Assoc.* v. *Train*, 539 F.2d 775, 783 (DC Cir. 1976); see also H.R. Rep. No. 1146, 91st Cong., 2d Sess. 3, reprinted in 1970 U.S. Code Cong. & Admin. News 5356, 5358. Congress defined the term "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." See CAA 111(a)(4), 42 U.S.C. 7411(a)(4).

In 1977, Congress adopted additional amendments to the Clean Air Act. These changes included preconstruction permitting requirements for major new and modified sources under two programs, prevention of significant deterioration (PSD) and nonattainment new source review (respectively, parts C and D of the Clean Air Act). Congress intended these programs to apply generally where industrial changes might increase pollution in an area. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 400 (DC Cir. 1979). Congress incorporated in parts C and D the same definition of the term "modification" set forth in the NSPS provisions. See CAA 111(a)(4), 169(2)(C), and 171(4).

The NSR program for PSD (CAA 160–169) applies in attainment areas, i.e., those areas which have attained the national ambient air quality standards (NAAQS). To receive a PSD permit, a prospective major new source or major modification must (among other things) show that (1) it will not cause or contribute to a violation of the available air quality "increment" (designed to prevent ambient air quality from deteriorating by more than certain specified levels), (2) it will not cause or contribute to a violation of a NAAQS, and (3) it will use the "best available control technology (BACT)," which must be at least as stringent as any applicable NSPS or hazardous pollutant standard under section 112 of the Act.

Part D of the 1977 Amendments applies to nonattainment areas, i.e., those areas which have not met the NAAQS under section 109. To receive a permit in such areas, major new and modified sources must (among other things) (1) obtain emissions offsets, thereby assuring that reasonable progress toward attainment of the NAAQS will occur, and (2) comply with the "lowest achievable emission rate (LAER)." See CAA 171–173.[3]

B. The Two-Step Test for Modifications

The modification provisions of the NSPS and NSR programs are based on the broad NSPS definition of "modification" in section 111(a)(4) of the Act. That section contemplates a two-step test for determining whether activities at an existing facility constitute a modification subject to new source requirements. In the first step, which is largely the same for NSPS and NSR, the reviewing authority determines whether a physical or operational change will occur.[4] If so, the reviewing authority proceeds in the second step to determine whether the physical or operational change will result in an emissions increase over baseline levels. In this second step, the applicable rules branch apart, reflecting the fundamental distinctions between the technology-based provisions of NSPS and the air quality-based provisions of NSR.

Briefly, the NSPS program examines maximum hourly emissions rates, expressed in kilograms per hour.[5]

---

[3] The 1970 Clean Air Act also included a provision applicable to construction or modification of any stationary source. This provision is presently set forth in section 110(a)(2)(C). Today's notice does not propose to change the scope of the regulations implementing this provision. See 40 CFR 51.160–164.

[4] This is further described in section III.H below.

[5] An hourly emissions rate may be determined by a stack test or calculated from the product of the

Continued

Emissions increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity. On the other hand, the NSR regulations examine total emissions to the atmosphere. For applicability determination purposes, emissions increases under NSR are determined by changes in annual emissions as expressed in tons per year (tpy).[6]

C. Step One: Physical or Operational Change

The EPA has always recognized that the definition of physical or operational change in section 111(a)(4) could, standing alone, encompass the most mundane activities at an industrial facility (even the repair or replacement of a single leaky pipe, or a change in the way that pipe is utilized). However, EPA has always recognized that Congress obviously did not intend to make every activity at a source subject to new source requirements.

As a result, EPA has defined "modification" in the NSPS and NSR regulations to include common-sense exclusions from the "physical or operational change" component of the definition. For example, both sets of regulations contain similar exclusions for routine maintenance, repair, and replacement; for increases in the hours of operation or in the production rate; and for certain types of fuel switches. See *e.g.*, 40 CFR 52.21(b)(2)(iii) and 60.14(e). In addition, with respect to pollution control equipment, the NSPS regulations contain an exclusion for:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR 60.14(e)(5). As will be discussed, in recent individual applicability determinations EPA has excluded pollution control projects from NSR following a similar "environmentally beneficial" test.

D. Step Two: Emissions Increases for NSPS Applicability

The EPA's NSPS regulations define the term "modification" as any "physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies." See 40 CFR 60.2 and 60.14. Under current NSPS regulations, emissions increases, for applicability purposes, are calculated by comparing the hourly emission rate, at maximum physical capacity, before and after the physical or operational change. That is, to determine whether a change to an existing facility will increase the emissions rate, the existing NSPS regulations authorize the use of an "emissions factor analysis," or a materials balance, continuous monitoring, or manual emissions test to evaluate emissions before and after the change. 40 CFR 60.14(b)(2).

Absent the exclusions from modifications specified at 40 CFR 60.14(e), any increase in emissions to the atmosphere over the previous emissions rate will subject the unit to NSPS. See. 40 CFR 60.14 (a) and (b). In addition, under the "reconstruction rules," physical or operational changes which would cost 50 percent or more of the total cost of a comparable new facility may be classified as reconstructions (see 40 CFR 60.15) and are subject to NSPS as a new source, even if there is no emissions increase.

E. Step Two: Emissions Increases Under NSR Requirements 1. Existing Regulations

The EPA's regulations implementing the PSD and nonattainment programs require preconstruction review for sources undertaking a "major modification," *i.e.*, a physical change or change in the method of operations "that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 CFR 52.21(b)(2)(i), 52.24(f)(5).[7] A "net emissions increase" is defined as the increase in "actual emissions" from the particular physical or operational change together with any other "contemporaneous" increases or decreases in actual emissions. 40 CFR 52.21(b)(3)(i).[8]

Applicability of the Act's new source review provisions must be determined in advance of construction and is pollutant specific. In cases involving existing sources, this requires a pollutant-by-pollutant projection of the emissions increases, if any, that will result from the physical or operational change. Specifically, to determine whether a proposed physical or operational change will result in an emissions increase, the source must first determine a baseline level of actual emissions. The regulations define actual emissions on a particular date as "the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation." 40 CFR 52.21(b)(21)(ii) The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* The EPA has typically used the 2 years immediately preceding the physical or operational change to establish the baseline. See 45 FR 52676, 52705, 52718 (1980). However, it can allow the use of an earlier 2-year period that is more representative of normal source operations. For example, in *WEPCO*, EPA found the fourth and fifth years prior to the modification more representative of WEPCO's normal operations.

Because the applicability determination must be made in advance of construction, EPA's NSR regulations provide that when an emissions unit "has not begun normal operations," actual emissions equal the "potential to emit of the unit." 40 CFR 52.21(b)(21)(iv). This approach is referred to as the actual to potential methodology. This regulatory provision may be overcome —and new source review will not apply—if the source owner agrees, in a

---

instantaneous emissions rate, i.e., the amount of pollution emitted by a source, after control, per unit of fuel combusted or material processed (such as pounds of sulfur dioxide emitted per ton of coal burned) times the production rate (such as tons of coal burned per hour). See 40 CFR 60.14.

[6] Annual emissions may be calculated as the product of the hourly emissions rate times the utilization rate, expressed as hours of operation per year, or as the product of an emissions factor (e.g., from *Compilation of Air Pollutant Emission Factors*, AP-42, 4th Ed. and subsequent supplements) in units of mass emitted per unit of process throughput times the annual throughput. See 40 CFR 52.21(b)(21).

[7] The current PSD program is set forth in two sets of regulations. One of the regulations cited (40 CFR 52.21) is part of the federal PSD permit program which applies as part of a Federal implementation plan for States that have not submitted a PSD program meeting the regulatory requirements of 40 CFR 51.166 (standards for PSD provisions in State implementation plans). In most States where the federal requirements apply, EPA has delegated the authority to implement the PSD program back to the State. Roughly two-thirds of the States are implementing their own PSD program pursuant to an EPA-approved state implementation plan. Sections 52.21 and 51.166 have identical modification provisions.

EPA's regulations for nonattainment areas are set forth at 40 CFR 51.165, 52.24 and in part 51, appendix S. These sections contain applicability provisions regarding modification that are largely identical to those in the PSD provisions.

[8] Roughly speaking, "contemporaneous" emissions increases or decreases are those which have occurred between the date five years preceding the proposed physical or operational change and the date that the increase from the change occurs. 40 CFR 52.21(b)(3)(ii). Once a modification is determined to be major, the PSD requirements apply only to those specific pollutants for which there would be a significant net emissions increase. E.g., 40 CFR 52.21(j)(3) (best available control technology); 40 CFR 52.21(m)(1)(b) (air quality analysis).

federally enforceable instrument—not to increase its actual emissions above baseline levels. *See e.g.*, 40 CFR 52.21(b)(4).

2. The *WEPCO* and *Puerto Rican Cement* Decisions

As noted above, to calculate whether a physical or operational change "increases" emissions, EPA regulations require it to find an increase in actual emissions. 40 CFR 52.21(b)(3)(i)(a). Where the emissions unit has not "begun normal operations," EPA regulations recognize that future actual emissions are difficult to predict and employ future "potential" emissions as a proxy. 40 CFR 52.21(b)(21)(iv). The linchpin under the current regulations for predicting future emissions after a modification is thus whether the unit has "begun normal operations."

Two recent federal appellate court decisions have addressed EPA's interpretation of the phrase "begun normal operations." These decisions, *Puerto Rican Cement Co., Inc.* v. *U.S. EPA*, 889 F.2d 292 (1st Cir. 1989) and *Wisconsin Elec. Power Co.* v. *Reilly*, 893 F.2d 901 (7th Cir. 1990) ("*WEPCO*"), occasion a reexamination of EPA's interpretation of the phrase, and of the usefulness of the regulatory language itself. The meaning of the phrase is highly fact-dependent, and these decisions have created uncertainty regarding its application; thus, as described later in this notice, EPA today proposes to change its regulations for electric utility steam generating units to employ a more useful criterion.

Both cases involved physical changes to existing emissions units, but changes of differing extent, nature and result. In *Puerto Rican Cement*, the owner of a cement plant [9] with several kilns sought to convert one "wet" kiln into a "dry" kiln, and to combine that kiln with another kiln. 889 F.2d at 293. The court observed that the total production capacity of the renovated single kiln would exceed the combined production capacity of the previous two separate kilns by "about 35%." *Id.* It noted that the renovated single kiln would employ a different "cement-making process" than the original kiln from which it was "converted," *id.* And it said that the new kiln would be "more efficient (and) may lead the firm to decide to increase the level . of production," *id.* at 297 (emphasis in original). In reviewing EPA's interpretation of "begun normal operations," the court applied a highly deferential standard of review, since an agency's interpretation of its own regulatory language is typically given " 'controlling weight unless it is plainly erroneous or inconsistent with the regulation.' " 889 F.2d at 297, quoting *Udall* v. *Tallman*, 380 U.S. 1, 16–17 (1965) (citation omitted). The court concluded that on the facts of the case, EPA's interpretation that "normal operations" had not begun was not "arbitrary or irrational," *id.* at 298, and hence EPA's application of the actual-to-potential test to predict future emissions was permissible.

In *WEPCO*, 893 F.2d 901, the Seventh Circuit was faced with a different kind of modification. There renovations were proposed for several older (35 to 50 year old) coal-fired electric utility boilers. The physical changes involved repair and replacement of turbine-generators, steam drums and other major components. The EPA contended, as it had in *Puerto Rican Cement*, that these changes went beyond "normal operations" and thus warranted use of future potential emissions as the test for an emissions increase over past actual emissions. Here the court disagreed with EPA's interpretation that "normal operations" had not begun. The court coined the phrase "like-kind replacement" to describe the type of renovation occurring at the WEPCo plant. *Id.* at 917. The court described a "like-kind replacement" as one that "does not 'change or alter' the design or nature of the facility. Rather, it merely allows the facility to operate again as it had before the specific equipment deteriorated." *Id.* at 908. In determining whether such a "like-kind replacement" had "begun normal operations," *id.* at 917, the court considered whether a "realistic assessment of (the) impact (of the change) on ambient air quality levels is possible." *Id.* at 917 (quoting *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 379 (DC Cir. 1979)). The court said that where the renovations were "like-kind replacements," EPA could not reasonably interpret its regulations to say that such a unit was so different that it has not "begun normal operations." Thus, it concluded that the "actual-to-potential" test could not be applied, under EPA's regulations, to units simply undergoing "like-kind replacements." [10]

Neither of these decisions specified the threshold for when a unit has "begun normal operations." Based on these decisions, under its current regulations, EPA must consider the facts of each case and apply the actual-to-potential test only where the change is sufficiently significant to support a finding that "normal operations" have not "begun." At least for changes that are "like kind replacements," "normal operations" have begun, and the actual-to-potential test is impermissible.

Because the "begun normal operations" criterion is highly fact-dependent and its application is inherently case-by-case, it may be an uncertain indicator of what emissions test will be applied in a given instance. However, EPA's extensive experience with electric utilities, and the generally similar nature of operations within this source category, provide EPA an adequate basis on which to predict future actual emissions from such units in most cases. Consequently, as explained below, EPA is today proposing to revise its regulations to apply the actual-to-actual test on all physical or operational changes at electric utility steam generating units save those that are an addition of a new unit or constitute a replacement of an existing unit. Pending final adoption of this new rule, EPA will continue to apply an actual-to-actual test to units that undertake "like-kind replacements" and other units which are found to have "begun normal operations."

F. The Clean Air Act Amendments of 1990

1. New Source Review and the Acid Rain Provisions

The Clean Air Act Amendments of 1990, Public Law No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), made numerous changes in the nonattainment provisions of the Clean Air Act and added a new title to address the problem of acid rain. The amendments attack nonattainment problems with a broad array of new requirements all designed to bring all areas of the country into attainment with the national ambient air quality standards for all pollutants. These requirements include traffic reduction strategies, use of alternative clean fuels, increased offset requirements for stationary sources, and changes in the threshold size of stationary sources subject to new source review. A principal theme of the legislation is the establishment of categories of nonattainment areas based on the severity of the pollution problem. The more severe the area, the more controls Congress required be imposed.

The Amendments also establish, in title IV, a new control scheme for addressing the acid rain problem. The

[9] *Puerto Rican Cement* involved a cement plant, not an electric utility, but the court's legal analysis of the phrase "begun normal operations" in the current regulations is relevant to all facilities.

[10] On remand, EPA employed an actual-to-future actual test, comparing WEPCo's representative actual emissions for the baseline period to estimated future actual emissions based on all the available facts in the record.

exclusive focus of this program is on utility power plant emissions of sulfur dioxide and nitrogen oxides. The 1990 Amendments require sulfur dioxide emissions from utilities to be reduced by approximately 10 million tons annually in two phases—the first to take effect in 1995, the second in 2000. A total of 111 specific plants are targeted in Phase I, and will be required to reduce their SO_2 emissions to specified emissions limits. In Phase II, these plants, and almost all others, are subject to even lower SO_2 emissions limits. This reduction program is to be implemented through a new market-based system under which emissions allowances reflecting the required reduction in current emissions are allocated to existing utility plants. Plant owners, who are required to hold allowances equal to their actual emissions, are then free to trade these allowances. Thus, the emissions of individual units may vary from the initial allocation of allowances, but aggregate emissions are always held to the program's overall target level. This program will provide powerful incentives to sources to undertake pollution control projects.

Because of these requirements, many of the plants subject to Phase I controls must make compliance decisions within the next year in order to assure that the complicated control equipment that may be necessary to meet Phase I standards is in place by the 1995 deadline. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the new source review requirements of title I. In particular, New Source Review (NSR) provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments proposed today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements.

2. Repowering and CCT Projects

In title IV of the 1990 Amendments, which creates the acid rain program, Congress made changes in the applicability of new source requirements to changes involving repowering and Clean Coal Technology (CCT) projects.

Section 409 grants an extension of the acid rain controls deadline to sources that seek to comply with the acid rain reductions by repowering a unit with qualifying clean coal technology. Section 402(12) defines repowering as:

> (The) replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990. Notwithstanding the provisions of section 409(a), for the purpose of this title, the term "repowering" shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

See CAA 402(12) and 409(a).

Congress provided that repowering projects that qualify for a Phase II compliance extension would also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act." See CAA 409(d). An operator can qualify for the 3-year extension of the Phase II emissions limitation by demonstrating (by December 31, 1997) to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to meet the title IV restrictions. The operator must provide, no later than January 1, 2000, additional documentation of the repowering project including a preliminary design and engineering effort for the project and a binding contract for the majority of the equipment needed, as well as any additional information the reviewing authority requires.

Today's proposal also implements an exemption from new source requirements for CCT demonstration projects created by Congress in section 415 of title IV of the 1990 Amendments. In these provisions, CCT is defined as any technology not in widespread use on the date of enactment that achieves significant reductions in SO_2 or nitrogen oxides (NO_x emissions associated with burning coal in the generation of electricity, process steam, or industrial products. See CAA 415(a). A CCT "demonstration project" is a project funded under DOE's CCT program or a similar project funded by EPA.[11]

[11] Section 415(b)(1) defines a CCT project as a project "using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency."

Repowering projects that are awarded funding from the Department of Energy (DOE) as permanent CCT demonstration projects (or similar projects funded by EPA) are exempt from NSPS and PSD requirements so long as potential emissions (see 40 CFR 52.21(b)(4)) from the unit do not increase as a result of the project. CAA § 415(b)(3). These funded projects may still be required to comply with the nonattainment NSR provisions of title I of the Act, unless they are excluded as pollution control projects.

The installation, operation, cessation, or removal of a temporary CCT demonstration project that is operated for 5 years or less is exempt from NSPS and both PSD and nonattainment new source requirements. See CAA 415(b)(2). However, the facility still must comply with the applicable SIP and other requirements necessary to attain and maintain the NAAQS.

Finally, in section 415(c), Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the Act that had been shut down for at least the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 98 percent for particulates, and had been equipped with low-NOx burners.

III. Discussion

A. Pollution Control Projects

1. Proposed Regulatory Changes for Pollution Control Projects

The EPA proposes to amend its PSD and nonattainment regulations as they pertain to utility pollution control projects by exercising its authority under the statutory definition of "modification" and confirming the Agency's current policy that such projects are not subject to NSR unless they render the unit less environmentally beneficial. Generally, pollution control projects at existing stationary sources are not major modifications subject to new source review requirements for the simple reason that they do not result in an increase in actual emissions. In addition, EPA has always recognized that Congress did not intend that every activity at an existing facility be considered a physical or operational

change for purposes of the new source review.[12]

The EPA is today proposing to adopt revisions to its PSD and nonattainment regulations for the addition, replacement or use at an existing electric utility steam generating unit of any system or device whose primary function is the reduction of air pollutants (including the switching to a less-polluting fuel where the primary purpose of the switch is the reduction of air pollutants). Under today's proposal, a utility pollution control project will not be treated as a physical or operational change unless the project renders the unit less environmentally beneficial.

As indicated above, the key to this addition to the list of exclusions from the term physical or operational change is EPA's judgment that Congress did not intend that pollution control projects be considered the type of activity that should trigger NSR. The EPA is today issuing regulatory language to explicate and formalize its statutory authority to exclude pollution control projects under the NSR provisions. In 1977, when Congress enacted the NSR provisions of the Act, it provided that the term "modification" in NSR shall have the same meaning as the term "modification" under NSPS. See Sections 169(2)(c), 171(4). At the time, regulations promulgated under the NSPS provisions defining "modification," provided that the term "modification" does not include:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR 60.14(e)(5). In 1978, EPA noted that "in adding section 169(2)(c) to the Act, Congress indicated that it intended to conform the meaning of 'modification' to 'usage in other parts of the Act.' 123 Congr. Rec. H11955, 11957 (Nov. 1, 1977)." 43 FR 26396 (June 19, 1978). Thus, just as EPA had the statutory authority to exclude pollution control projects by regulation from NSPS, the statutory authority exists for EPA to explicate by regulation an exclusion for pollution control projects from parts C and D of title I.

As discussed in greater detail in a subsequent section, this exclusion under NSR reflects the existing regulatory exclusion for pollution control activities under NSPS regulations, and several recent case-specific nonapplicability determinations under the new source review programs. The NSPS regulatory exclusion contains the proviso that the replacement of a pollution control system or device cannot be less "environmentally beneficial" to qualify for the exclusion. See. 40 CFR 60.15(e)(5). With respect to new source review, today's proposal adopts a similar regulatory exclusion for pollution control projects in the PSD and nonattainment context. The major difference in the proposed NSR exclusion is that it would apply the "not less environmentally beneficial" test to the addition and use, as well as the replacement, of a pollution control system or device. This change reflects the distinct air quality component of the PSD and nonattainment programs. By focusing on whether a pollution control project is a physical or operational change within the meaning of the new source review regulations, today's ruling avoids the need to undertake a quantitative emissions increase calculation in every case, as would be necessary if such projects were deemed to be physical or operational changes. The EPA expects that most, if not all, pollution control projects will reduce net actual emissions. Nevertheless, the Administrator's authority to consider individual pollution control projects provides an adequate opportunity to determine that a pollution control project would somehow result in an adverse environmental impact and thus conclude that the project renders the unit less environmentally beneficial, and is therefore a physical or operational change that may be subject to NSR.

For the purposes of this proposal, a pollution control project refers to a project undertaken at a utility unit for purposes of reducing emissions from such unit. These changes are limited to the installation of conventional or innovative emissions control equipment, including, but not limited to, installation of conventional and advanced flue gas desulfurization, sorbent injection for SO_2 and NOx controls, electrostatic precipitators, and projects undertaken to accommodate switching to a less polluting fuel, including natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling SO_2 and NOx emissions.

Likewise, any activity that is necessary to accommodate switching to a less polluting fuel is considered to be part of the pollution control project. In some instances, this may involve changes to the pollution generating equipment (*e.g.*, boiler), but only if the changes are necessary to maintain the normal operating capability of the unit at the time of the project, where the capability would otherwise be impaired as a result of the fuel switch. For example, an electric utility steam generating unit that switches from a higher sulfur bituminous coal to a low-sulfur subbituminous coal may need to make certain changes to the boiler in order to avoid derating the unit.

Changes that are intended primarily to restore original capacity or to improve the operational efficiency of the facility are not considered to be part of a pollution control project for purposes of this proposal. Such changes are addressed elsewhere in this proposal. Also, the source still must comply with all applicable SIP limits and requirements, permit conditions and applicable NAAQS or PSD increment limits.

As proposed, this pollution control project exclusion will not extend to source categories other than electric utility steam generating units. The EPA has so limited this provision because, in contrast with a general lack of experience with other industries, EPA has extensive experience in addressing new source applicability issues regarding pollution control projects in the utility industry. That experience has led EPA to conclude that pollution control projects in the utility industry are generally environmentally beneficial.

2. Additional Modeling Requirements

A proposed pollution control project or physical or operational change cannot result in an emissions increase that will cause or contribute to a violation of a national ambient air quality standard, PSD increment, or visibility limitation. See CAA sections 110(a)(2)(c), 165, 169A(b), 173. The pollution control projects exclusion does not authorize any significant net increase in emissions that would have this proscribed impact. It is possible that a pollution control project, while not causing any increase in maximum hourly emissions, will cause a significant net increase in actual emissions, which in turn could cause or contribute to the violation of a National Ambient Air Quality Standards (NAAQS), increment or visibility limitation. For this reason, under today's proposal, the reviewing authority may require a source to perform an air quality impact analysis (modeling) whenever (1) it has reason to believe that a proposed change will result in a significant net increase in actual emissions of any criteria pollutant ove.

[12] For instance, EPA has specifically recognized that routine maintenance, repair and replacement, and changes in hours of operation or in the production rate are not considered a physical change or change in the method of operation. See 40 CFR 52.21(b)(2)(iii), 52.24(f)(5)(iii), 51.165(a)(1)(v)(C)(1), 51.166(b)(2)(iii), and 60.14(e)(1).

levels used for that source in the most recent air quality impact analysis and (2) it has reason to believe that such an increase would cause or contribute to a violation of a NAAQS, increment or visibility limitation. If this modeling indicates that this increase in emissions will cause or contribute to a violation of any ambient standard, PSD increment or visibility limitation, the pollution control exclusion does not apply.

3. The EPA's Existing Policy Regarding Pollution Control Projects

As noted above, generally pollution control projects at existing stationary sources are not major modifications subject to new source review because they do not usually result in an increase in actual emissions, and EPA believes that, in general, pollution control projects were not intended by Congress to be considered physical or operational changes for purposes of NSR.

The EPA currently applies its PSD regulations in harmony with its NSPS regulations, which exclude most pollution control projects. See 40 CFR 60.14(e)(5). In 1977, Congress incorporated the NSPS definition of modification into the PSD and nonattainment statutes. CAA sections 111(a)(4), 169(a)(c), 171(4). In addition, the legislative history reflects that, as a general matter, Congress intended to conform the meaning of "modification" for PSD purposes to the usage under the NSPS program. See 123 Cong. Rec. H11957 (November 1, 1977). The EPA reiterated this view in 1978. See 43 FR 26396, June 19, 1978. Subsequently, EPA interpreted its NSR regulations to incorporate the NSPS pollution control project exclusion.[13] The EPA later voiced concern about incorporating the precise NSPS pollution control language in the NSR context absent explication through notice-and-comment rulemaking largely because of the ambient air quality component of NSR that is absent from the NSPS program.[14] In recent years however, EPA has consistently excluded pollution control projects from NSR provided that the proposed project would be environmentally beneficial, taking into account ambient air quality.[15] In light of the title IV requirements and other provisions of the Clean Air Act Amendments of 1990, EPA confirms that it will continue to consider the overall environmental consequences of pollution control projects for NSR applicability on an interim basis pending final action on the proposed regulatory exclusion for pollution control projects. By its nature, a determination of whether or not a project renders a unit less environmentally beneficial involves case-by-case assessment of its net emissions and overall impact on the environment. In making such assessments, EPA must consider the overall emissions before and after the project, as well as any other relevant environmental factors. As a result, no single factor can be identified in advance for purposes of making this determination.

B. Representative Actual Annual Emissions

As described above, EPA proposes to revise its methodology for calculating emissions increases at electric utility steam generating sources. The EPA proposes to compare actual emissions before and after changes for all physical or operational changes at an existing electric utility steam generating unit other than the addition of a new unit or the replacement of an existing unit. Under today's action, EPA proposes to consider a unit to be replaced if it would constitute a reconstructed unit within the meaning of 40 CFR 60.15. Since there is no relevant operating history for wholly new units and replaced units, it is not possible to reasonably project post-change utilization for these units, and hence, their future level of "representative annual actual emissions." For other changes, past operating history, and other relevant information, provides a basis for reasonable projections.

As proposed today, the "representative actual annual emissions" methodology requires the utility to compare its baseline emissions with its future actual emissions to determine if the proposed change will increase actual emissions. The EPA's existing regulations define baseline emissions as "the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation." See *e.g.*, 40 CFR 52.21. The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* Although not required by the regulations, EPA has historically used the 2 years immediately preceding the proposed change to establish the baseline. (See 45 FR 52676, 52705, 52718 (1980).) However, in some cases it has allowed the use of earlier periods. For example, in *WEPCO,* EPA found the fourth and fifth years prior to the modification more representative of WEPCO's normal operations since the source's capacity was reduced due to physical problems. The EPA proposes today to retain this regulatory language, but to adopt a new presumption regarding its implementation.

Under today's action, the Administrator will presume that any 2 consecutive years within the 5 years prior to the proposed change is representative of normal source operations for a utility. This presumption is consistent with the 5-year period for "contemporaneous" emissions increases and decreases in 40 CFR 52.21(b)(3)(i)(b).[16] Source owners or operators desiring to use other than a 2-year period or a baseline period prior to the last 5 years may seek the Administrator's specific determination that such period is more representative of normal operations.[17]

The future actual projection is the product of: (1) The hourly emissions rate, which is based on the unit's physical and operational capabilities following the change and federally-enforceable operational restrictions that would affect the hourly emissions rate following this change; and (2) projected capacity utilization, which is based on (a) the unit's historical annual utilization, and (b) all available information regarding the unit's likely post-change capacity utilization.[18] The

[13] Memorandum from Edward Reich, Director, Stationary Source Compliance Division and William F. Pedersen, Acting Associate General Counsel, Air, Noise, and Radiation Division to Allyn M. Davis, Region IV (April 21, 1983).

[14] See, Memorandum from Gerald A. Emison, Director, OAQPS, to Regional Division Directors (July 7, 1986).

[15] See, Letter, William G. Rosenberg, Assistant Administrator, EPA, to Andrew Aitken, Vice President, New England Power Service Co., March 26, 1991; Letter, Rosenberg to Patrick M. McCarter, Senior Vice President, Public Service Co. of Colorado, July 23, 1990; Letters, David Kee, Director, Air and Radiation Division, EPA Region V, to Timothy J. Method, Assistant Commissioner, Indiana Dept. of Environmental Management, January 30, 1990 and March 8, 1990.

[16] This presumption does not apply to past modifications at an emissions unit for the purpose of determining contemporaneous emission changes at a source and cannot be used to extend the five year period specified in that provision. See 40 CFR 52.21(b)(3)(i)(b).

[17] The level of baseline emissions selected must be consistent with current assumptions regarding the source's emissions that are used under the state implementation plans (SIP) for planning or permitting purposes. Thus, the source may not select a level of baseline emissions higher than that used by the permitting authority in issuing a PSD or other construction permit to a source in the area, if such higher level would result in a NAAQS or increment violation, or violate a visibility limitation.

[18] In projecting future utilization and emissions factors, the permitting authority may consider the company's historical operational data, its own representations, filings with Federal, State or local regulatory authorities, and compliance plans developed under title IV of the 1990 Amendments.

projection of post-change capacity utilization for applicability purposes should be based on a projection of utilization for a period after the physical or operational change. Specifically, EPA today proposes to allow sources to base the projection of utilization on the 2 years after the change, or a different consecutive 2-year period within the 10 years after the change, where the Administrator determines that such period is more representative of normal source operations.

C. The Causation Requirement

The NSR regulatory provisions require that the physical or operational change "result in" an increase in actual emissions in order to consider that change to be a modification. See *e.g.* 40 CFR 52.21(2)(i). In other words, NSR will not apply unless EPA finds that there is a causal link between the proposed change and any post-change increase in emissions. The EPA today proposes to amend its rules to clarify this provision in the context of modifications at electric utility steam generating units.

Under these proposed regulations, any emissions increase attributable to a physical or operational change, such as a physical or operational change that significantly alters the efficiency of the plant, (see, *Puerto Rican Cement,* 889 F.2d at 297–8), must continue to be included in the post-change emissions calculation. Today's proposal makes clear that where increased operations are in response to independent factors, such as system-wide demand growth, which would have occurred and affected the unit's operations even in the absence of the physical or operational change, such increases do not result from the change and shall be excluded from the projection of future actual emissions. Thus, in assessing whether the proposed change will result in an increase in actual emissions, utilities need not include in their projection of post-change utilization that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, such as an increase in projected capacity utilization due to the rate of electricity demand growth for the utility system (of which that source is a member) as a whole.

Under this proposal, during a representative baseline period (see *supra*), the plant must have been able to accommodate the projected demand growth physically and legally even absent the particular change. Increased operations (and resultant increases in actual emissions) that could not physically and legally be accommodated but for the proposed physical or operational change should be considered to result from the change.

D. Repowering

As previously mentioned, title IV of the 1990 Amendments grants special treatment to utilities that seek to comply with mandated acid rain reductions by repowering a unit with qualifying clean coal technology. 1990 Amendments sections 402(12), 409(a). Specifically, repowering projects that qualify for a Phase II compliance extension will also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act." Section 409(d). The EPA interprets the requirement that the repowering not lead to an increase in "actual hourly emissions" as an expression of Congressional intent that will respect to repowering projects, EPA should use the same general approach to determining applicability as it has for other physical or operational changes, discussed above. Accordingly, EPA today proposes rules that provide that a repowering project which results in an increase over baseline in a unit's post-modification hourly emissions will not be eligible for this limited NSPS exemption.

The proposed NSPS exemption applies to repowering of existing units at existing sources, so long as the project qualifies for the Phase II extension and satisfies the "actual hourly emissions" increase test. Because of this provision, the reconstruction limitations specified in 40 CFR 60.15 are not applicable to qualifying repowering projects. However, no special treatment can be afforded to a new unit which is located at a different site than the existing unit it replaces. See CAA section 409(d).

Pursuant to section 409(e), EPA will provide expedited NSR processing for repowering projects and will encourage State permitting authorities to do the same.

E. Clean Coal Technology Demonstration Projects

Today's notice also proposes rules implementing the new CCT exemption created by the 1990 Amendments. For the purposes of this proposal, temporary CCT demonstration projects are defined as those CCT demonstration projects lasting 5 years or less. Title IV gives these projects an exemption from NSPS, PSD and nonattainment requirements. *Id.*, section 415(b)(2). However, the facility would still be subject to any applicable SIP and must comply with any other requirements necessary to attain and maintain NAAQS. This ruling proposes to implement this provision and clarifies that EPA considers the 5-year period as starting on the date of startup (as defined in 40 CFR 60.2). A temporary demonstration project may be converted to a permanent status at any time, provided it meets all the requirements that apply to a permanent CCT project criteria at the time of conversion.

Further, EPA proposes that at the end of a temporary project, the facility must be returned to pre-demonstration conditions and hourly emission rates (or lower). The return of the facility to its pre-demonstration physical and operational condition would not result in the loss of the actual emissions margin between pre-demonstration actual emissions rate and SIP allowable emissions rates for that facility. Rather, the facility would be treated as if the temporary demonstration project had never occurred.[19]

This proposal does not extend to emissions increases that are unrelated to the conduct of temporary demonstration projects. The EPA considers emissions increases (above the predemonstration levels) that are attributable to physical or operational changes, other than those necessary to restore that unit to its pre-demonstration condition, to be beyond the scope of the Congressional exemption.

Today's action also proposes to implement an exemption from NSPS and PSD requirements for repowering projects which are awarded funding from the DOE as permanent CCT demonstration projects (or similar projects funded by EPA) so long as potential emissions (see § 52.21(b)(4)) from the unit do not increase as a result of the project. Section 415(b)(3). However, repowering projects that qualify as pollution control projects will be treated as other pollution control projects for the purposes of the nonattainment provisions of title I of the Act.

Finally, today's proposal would implement the statutory exemptions in section 415(c). In that section, Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the Act that had been shut down for at least

[19] This would be the case even if there were small differences in the post-demonstration physical and operational conditions due to a technical inability to restore the unit to its precise pre-demonstration condition, or due to normal variability in the coal used. Thus, EPA would not seek to apply NSPS or NSR because of a post-demonstration emissions increase attributable solely to an increase in the hours of operation or production rate of the unit (subject to the NSPS limitation that the production rate increase must be accomplished without a capital expenditure).

the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 98 percent for particulates, and had been equipped with low-NOx burners. This exemption appears to have been narrowly tailored and is not expected to have widespread applicability.

Because these proposed rules merely implement straightforward statutory exemptions that were immediately effective upon passage of the 1990 Amendments, EPA intends, as a matter of statutory interpretation, to follow the policies set forth in today's proposal pending final action.

F. Calculation of NSPS Baseline

As discussed in section II of this notice, "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" is a modification for NSPS applicability purposes. See 40 CFR 60.14(a). The NSPS regulations implementing this general definition focus on increases in hourly emissions, expressed in kilograms of pollutant discharged per hour. To determine if an increase in hourly emissions has occurred at a unit, a pre-change baseline must be established. Under current regulations, the emissions rate before and after a physical or operational change is evaluated at each unit by comparing the current hourly potential emissions at maximum operating capacity to hourly emissions at maximum capacity after the change. In this calculation, the reviewing authority disregards the unit's maximum design capacity.[20] The original design capacity of a unit, to the extent it differs from actual maximum capacity at the time that the baseline is established due to physical deterioration of the facility, is immaterial to this calculation.

Today EPA is proposing that, for an existing electric utility steam generating unit, the pre-change baseline for NSPS applicability purposes shall be calculated using the highest hourly emissions rate achievable at any time during the 5 years prior to the change. This proposal retains the key concept in existing regulations that the baseline be determined during a period that is roughly contemporaneous with the proposed change at the affected facility. The EPA believes that this proposed revision, while modest, is still necessary to avoid the current regulation's undue emphasis on the physical condition of the affected facility immediately prior to the change. Today's more flexible provision enables units to establish a baseline that is representative of its physical and operational capacity in recent years, while still precluding the use of a baseline tied to original design capacity, which as noted above may bear no relationship to the facility's capacity in recent years.

Without this revision, the NSPS regulations may unduly burden utilities undertaking physical or operational changes in conjunction with the acid rain program. For instance, if a unit has broken down and is in need of repairs, the utility's baseline will be artificially low. The proposed change will allow utilities to demonstrate that an earlier, higher capacity was more representative of the unit's maximum hourly emissions rate.

G. Utility BACT Presumption for NOx

In today's notice, EPA proposes to adopt a presumption that, in the case of PSD permits issued by EPA under 40 CFR 52.21, best available control technology (BACT) for emissions of nitrogen oxides from existing coal-fired electric utility steam generating units undergoing a modification is the technology required under section 407 of the Clean Air Act. In general, this will call for the use of combustion modification and/or low-NOx burners or similar, cost-effective technologies by those utilities required to obtain PSD permits for NOx emissions following final action on today's proposal.

In brief, section 407 requires most utility units subject to phase I and phase II to meet NOx emission limitations on the same date as the phase I or phase II SO_2 emission limitations become effective. The Administrator must establish annual emission limitations (based on rates listed in the section) for tangentially-fixed boilers and dry bottom wall-fired boilers within 18 months of enactment. These limitations must be achievable with low-NOx burner technology. CAA section 407(b)(1). The Administrator must promulgate annual emission limitations for all other boilers by January 1, 1997, based on a "best system of continuous emission reduction * * * which is comparable to the cost of" low-NOx burners. By the same date, the Administrator may make the rates for boiler types identified in section 407(b)(1) more stringent if more effective low-NOx burner technology is available. CAA section 407(b)(2).

Low-NOx burners are commercially available and can be retrofitted on many boiler types, providing a high degree of emissions reduction at relatively low costs. Depending on boiler type, low-NOx burners can reduce emissions of NOx by approximately 20 to 60 percent. Again depending on boiler type and other factors, the cost of replacing conventional burners with these controls is in the range of $8.00 to $16.00 per kilowatt.

Other NOx control technologies are being developed for retrofitted use on at least some coal-fired electric utility units, and thus can provide a much greater degree of emissions reductions. These include selective noncatalytic reduction (SNCR or "thermal de-NOx") and selective catalytic reduction (SCR). (In addition, DOE has funded two new technologies under its CCT demonstration program which are designed for the simultaneous removal of SO_2, NOx and particulate matter that may become commercially "available" in the future.)[21] However, SNR and SNCR are not in use in this country as retrofit technologies for coal-fired boilers, and the DOE sponsored projects have not yet been demonstrated. Current estimates of control costs for these technologies are much higher than for low-NOx burners, especially when considered in the context of retrofitting existing units.

The EPA has in the past issued guidance documents effectively creating presumptions that certain technologies constituted BACT for certain source categories. See Memorandum, Operation Guidance on Control Technology for New and Modified Municipal Waste Combustors, from Gerald A. Emison, Director, Office of Air Quality Planning and Standards, EPA, June 26, 1987, p. 5. The EPA believes it is appropriate to propose to do so here as well in the case of low-NOx burners for modified coal-fired utility boilers in light of the strong congressional policy judgment favoring use of that technology for acid rain control reflected in section 407.

Section 169(3) of the Act, 42 U.S.C. 7479(3) defines BACT as:

[20] See 39 FR 36,948 col. 1 (proposed rule). In *WEPCO*, the utility contended that baseline capacity for the purpose of determining whether an increase in emission rate occurs for purposes of an NSPS modification is the original design capacity of the facility. However, the court rejected WEPCO's argument that original design capacity or past "representative" capacity, no longer achievable at the plant, had to be used for the baseline emissions rate.

[21] One technology—low NOx/SOx burner Retrofit—is designed specifically for cyclone boilers which cannot be retrofit with low NOx burners while the other—the Advanced Slagging Combustor—is applicable to a number of boiler types.

An emissions limitation based on the maximum degree of reduction of each pollutant subject to regulation under the Clean Air Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by an applicable standard established pursuant to section 7411 or 7412 of this title. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to enactment of the Clean Air Act Amendments of 1990.

The BACT provision reflects congressional intent both to grant permitting authorities broad discretion to weigh the statutory factors as they see fit in reaching a final substantive determination on BACT and to create a procedural methodology that would provide a mechanism for stimulating the widespread use of effective pollution control technologies.[22]

The EPA believes that today's proposed presumption is consistent with BACT requirements because it does not purport to relieve the permitting authority of the obligation to weigh the statutory factors in reaching BACT determinations. Rather, it reflects an exercise of policy judgment by EPA where it is the permitting authority that in most cases a BACT analysis of currently demonstrated technologies for retrofitting existing utility boilers would lead to the selection of low NOx burners and/or combustion modifications identified in section 407(b)(1).

Although EPA has authority under the present regulations to create this presumption regarding BACT for NOx, EPA is soliciting comment prior to adopting such a presumption in order to obtain the views of the public on the policy conclusions discussed above.

This proposed presumption would not apply in States with PSD programs that have been incorporated into state implementation plans under regulations promulgated at 40 CFR 51.166. However, such States are encouraged to adopt this presumption as a matter of state policy.

[22] See S. Rep. No. 95–217, 95th Cong., 1st. Sess. 31 (1977); Statement of Senator Muskie, 123 Cong. Rec. 26171 (June 8, 1977).

H. Applicability Determinations

In most instances, source owners or operators are able to readily ascertain whether new source review requirements apply to them. Consequently, in administering these requirements, EPA does not require sources to obtain a formal applicability determination before proceeding with construction. In keeping with that practice, EPA will not require utilities to seek applicability determinations under either the revised regulations proposed today or the interpretations of existing regulations contained in this preamble. Utilities in most cases can readily ascertain how this notice will affect them. The EPA anticipates, however, that questions will arise regarding certain aspects of this proposal. Because some instances involve discrete judgments, utilities may wish to obtain determinations of applicability. The EPA will provide such determinations upon request. Such requests should be submitted together with appropriate documentation to the appropriate permitting authority.

IV. Administrative Requirements

A. Docket

A docket has been established for this action under section 307(d)(1)(I) and (N) of the Clean Air Act, 42 U.S.C. 7607(d)(1)(I) and (N). The docket is an organized and complete file of all information considered in the development of this ruling. The docket is intended to allow the public to identify and locate documents related to this ruling. The docket number for this ruling is A–90–06.

B. Paperwork Reduction Act

No additional public reporting burden will result from this ruling. All information collection requirements of the Federal NSR and NSPS regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., and have been assigned OMB control numbers 2060–0003 for NSR, and 2060–0023, 2060–0026 and 2060–0072 for NSPS. The effect of this rule would be a reduction in paperwork related to complying with NSR and NSPS requirements, since this ruling provides additional clarification as to physical and operation changes that may be excluded from these requirements.

C. OMB Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a rule is "major" and therefore subject to the requirement of a regulatory impact analysis (RIA). This ruling is a major rule. However, EPA has not prepared an RIA because it will not result in any significant adverse environmental effects and will reduce the economic costs of meeting the requirements of the CAA. This ruling was submitted to the OMB for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket A–90–06.

D. Effective Date

Section 4(d) of the Administrative Procedures Act (APA), 5 U.S.C. 553(d), requires a 30-day waiting period before making a substantive rule effective. Since the regulatory revisions being proposed today are considered substantive, they are subject to the notice-and-comment requirements of the APA and will become effective only after public comments have been received and considered, and final action has been taken. The portions of this notice that merely confirm EPA policy are effective immediately.

E. Regulatory Flexibility Act

This action is not subject to the certification provisions of section 605(b) of the Regulatory Flexibility Act (RFA) because this rule will result in a reduction of administrative costs and no increase in control costs, therefore having no significant impact on industry.

List of Subjects

40 CFR Part 51

Administrative procedure and practices, Intergovernmental relations, Air pollution control, NSR, Clean Coal Technology projects, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons, Lead.

40 CFR Part 52

Air pollution control, NSR, Clean Coal Technology projects, Repowering, Sulfur oxides, Particulate matter, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead.

40 CFR Part 60

Air pollution control, NSPS, Clean Coal Technology projects, Repowering, Sulfur oxides, Particulate matter, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead.

Dated: June 4, 1991.

F. Henry Habicht,

Acting Administrator.

For the reasons set forth in the preamble, parts 51, 52 and 60 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7410, 7411, 7470–7479, 7491, 7501–7508, 7601 and 7602, as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990); 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 51.165 is amended by revising paragraph (a)(1)(xii)(D) and by adding paragraphs (a)(1)(v)(C)(*8*), (a)(1)(v)(C)(*9*), (a)(1)(v)(C)(*10*), (a)(1)(xii)(E), (a)(1)(xx) (a)(1)(xxi), (a)(1)(xxii), (a)(1)(xxiii), (a)(1)(xxiv), (a)(1)(xxv), and (a)(1)(xxvi) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(v) * * *

(C) A physical change or a change in the method of operation shall not include:

* * * * *

(*8*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the reviewing authority determines that such addition, replacement, or use renders the unit less environmentally beneficial, and except:

(*i*) When the reviewing authority has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I, if any, and

(*ii*) The reviewing authority determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*9*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*i*) The State implementation plan for the State in which the project is located, and

(*ii*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*10*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(xii) * * *

(D) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (a)(1)(xii)(E) of this section) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(E) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit.

* * * * *

(xx) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(xxi) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the permitting authority determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the permitting authority shall:

(A) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(B) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(xxii) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(xxiii) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 5, 1990.

(xxiv) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(xxv) *Reactivation of very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(A) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(B) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(C) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(D) Is otherwise in compliance with the requirements of the Clean Air Act.

(xxvi) *Pollution control project* means any physical change or change in the method of operation, at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such changes are limited to:

(A) The installation of conventional or innovative pollution control technology,

including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(B) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change including, but not limited to natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(C) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(D) A permanent clean coal technology demonstration project that constitutes a repowering project.

* * * * *

3. Section 51.166 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii)(*h*), (b)(2)(iii)(*i*), (b)(2)(iii)(*j*), (b)(2)(iii)(*k*), (b)(2)(iii)((*l*), (b)(21)(v), (b)(30), (b)(31), (b)(32), (b)(33), (b)(34), (b)(35), (b)(36), and (b)(37) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

* * * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the reviewing authority determines that such addition, replacement, or use renders the unit less environmentally beneficial and except:

(*1*) When the reviewing authority has reason to believe pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The reviewing authority determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*i*) Any physical change or change in the method of operation at an existing electric utility generating unit (other than the addition of a new unit or the replacement of an existing unit) that would not result in a significant net increase in representative actual annual emissions of a regulated pollutant at the unit.

(*j*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located; and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*k*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*l*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (b)(21)(v) of this section) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change.

* * * * *

(30) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(31) *Pollution control project* means any physical change or change in the method of operation at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such changes are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change, including but not limited to natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency, or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(32) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the reviewing authority determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the reviewing authority shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(33) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(34) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(35) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the nations ambient air quality standards during and after the project is terminated.

(36)(i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The reviewing authority shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under 409 of the Clean Air Act.

(37) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7642 as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), unless otherwise noted.

2. Section 52.21 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii)(*h*), (b)(2)(iii)(*i*) (b)(2)(iii)(*j*), (b)(2)(iii)(*k*), (b)(21)(v), (b)(31), (b)(32) (b)(33), (b)(34), (b)(35), (b)(36), (b)(37), and (b)(38) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

* * * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, and except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The Administrator determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located, and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*j*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potental to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*k*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (v) of this subsection) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit.

* * * * *

(31) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(32) *Pollution control project* means any physical change or change in the method of operation, at an existing electric utility steam generating unit for

purposes of reducing emissions from such unit. Such changes are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change including, but not limited to natural gas or coal reburning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(33) *Representative actual annual emissions* mean the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(34) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emission of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(35) *Clean coal technology demonstration project* means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(36) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(37)(i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: Atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(38) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority; emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

3. Section 52.24 is amended by revising paragraph (f)(13)(iv) and by adding paragraphs (f)(5)(iii)(*h*), (f)(5)(iii)(*i*), (f)(5)(iii)(*j*), (f)(13)(v), (f)(19), (f)(20), (f)(21), (f)(22), (f)(23), (f)(24), and (f)(25) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(5) * * *

(iii) * * *

* * * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, and except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The Administrator determines that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State implementation plan for the State in which the project is located, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(13) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (f)(13)(v) of this section) that has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit.

* * * * *

(19) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(21) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(22) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(23) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(24) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

(25) *Pollution control project* means any physical change or change in the method of operation, at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such changes are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) A physical change, or change in the method of operation, to accommodate switching to a fuel which is less polluting than the fuel in use prior to the change including, but not limited to natural gas or coal reburning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399 (Nov. 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 60.2 is proposed to be amended by adding the following definitions in alphabetical order:

§ 60.2 Definitions.

* * * * *

Clean coal technology demonstration project means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstrations of clean coal

technology, or similar projects funded through appropriations for the Environmental Protection Agency.

* * * * *

Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

* * * * *

Repowering means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

Reactivation of a very clean coal-fired electric utility steam generating unit means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carrier in the permitting authority's emissions inventory at the time of enactment;

(2) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

3. Section 60.14 is amended by adding paragraphs (h), (i), (j), (k) and (l) to read as follows:

§ 60.14 Modification.

* * * * *

(h) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(i) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(j)(1) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the five years prior to the change.

(2) This exemption shall not apply to any new unit that:

(i) Is designated as a replacement for an existing unit;

(ii) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(iii) Is located at a different site than the existing unit.

(k) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A "temporary clean coal control technology demonstration project", for the purposes of this section is a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(l) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

[FR Doc. 91-14098 Filed 6-13-91; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
June 14, 1991

Part VI

Department of Education

Innovation in Education Program (Academies for School Leaders and Academies for Teachers); Inviting Applications for New Awards for Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program (Academies for School Leaders and Academies for Teachers) Notice Inviting applications for new awards for fiscal year 1991

[CFDA No.: 84.215N and 84.215P–84.215U]

Purpose of Program: To provide grants for projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary, and secondary levels.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions or consortia of those entities.

Deadline for Transmittal of Applications: 7–31–91.

Deadline for Intergovernmental Review: 9–28–91.

Applications Available: 6–24–91.

Available Funds: $7,000,000.

Estimated Range of Awards: $250,000–$500,000.

Estimated Number of Awards: 21.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12–18 months.

Budget Period: 12–18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Supplementary Information: On May 6, 1991, the Secretary published a notice of proposed priorities for Academies for School Leaders and Academies for Teachers in the **Federal Register** (56 FR 21058). The public comment period for the notice of proposed priorities ended on June 5, 1991.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities to allow sufficient time to conduct the competition and issue awards prior to the end of the fiscal year (September 30, 1991).

Thirty-five parties, almost all of whom were supportive of the priorities, commented on the notice. The Secretary anticipates making only one change in response to these comments: clarifying that the Academies for School Leaders (Priority 1) must serve current school leaders as well as those desiring to become school leaders.

This notice contains the priorities as the Secretary expects to issue them in the notice of final priorities. Applicants should prepare their applications on the basis of these priorities. If the Secretary makes any substantive changes to these priorities before issuing the notice of final priority, applicants will be given an opportunity to revise their applications.

The Secretary solicits separate applications for each of the absolute priorities. The Secretary anticipates that approximately three awards will be made for each absolute priority.

Priorities

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary sets funds aside separately for each of the following priorities, and funds under this competition only applications that meet one of these priorities.

Absolute Priority 1—Academies for School Leaders (CFDA 84.215N)

Projects to operate training academies for public and private school leaders. Each academy must serve a State or a multi-State region, and the Governors of the States to be served must be consulted in the design and operation of the academy's program. Only one academy in a State or region will be funded. The activities carried out by an academy must include:

- Construction of a model curriculum for the development of school leaders that focuses on instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms;
- Identification of candidates to be trained as new school leaders, including minorities and persons with disabilities, using a carefully designed search process;
- Identification of schools with principal and other school leader vacancies and negotiation with schools and school districts to: match the trainee-candidates with districts or schools that will sponsor and support the candidates; and identify and support exceptional, experienced principals and other school leaders to serve as mentors to the trainee-candidates;
- Operation of school leadership programs during the school year or during the summer that provide intensive training and development both for persons desiring and demonstrating outstanding promise to become school leaders, and for current school leaders seeking enhanced and up-to-date knowledge needed to perform their jobs effectively;
- Monitoring and facilitating an internship, as appropriate, for each of the new school leaders who are graduates of the intensive development programs under the guidance and supervision of an experienced school leader; and
- Providing periodic follow-on development activities for the trainees.

Invitational Priorities

Within Absolute Priority 1, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1

Projects that would match funds provided under this priority with funds from non-Federal sources.

Invitational Priority 2

Projects that would combine the resources of different schools within an institution of higher education, such as the schools of arts and sciences, business or management, and education, or that would provide a similar multidisciplinary approach.

Absolute Priorities 2–7—(Academies for Teachers)

English Academies for Teachers (CFDA 84.215P).
Mathematics Academies for Teachers (CFDA 84.215Q).
Science Academies for Teachers (CFDA 84.215R).
History Academies for Teachers (CFDA 84.215S).
Geography Academies for Teachers (CFDA 84.215T).
Academies for Teachers in the Five Core Disciplines (CFDA 84.215U).

Projects to operate training academies for teachers in each of the five core academic disciplines—English; mathematics; science; history; and geography—and projects to operate single academies that deliver training to teachers in all five disciplines. Each academy must serve a State or a multi-State region, and the Governors of the States to be served must be consulted in the design and operation of the academy's program. Only one academy will be funded in a State or region to deliver training in a given discipline. The activities carried out by an academy must include:

• Development of a model curriculum for the training of teachers that focuses on renewal and enhancement of teachers' knowledge of the core academic discipline or disciplines addressed by the academy; teaching skills and strategies needed to impart academic subject matter to students including students from diverse backgrounds and students with disabilities; the use of educational technologies in teaching the core discipline; and the training that teachers need to become master teachers and to participate in curriculum development;

• Recruitment of teachers within the State or region to participate in the program of the academy, with an effort made to recruit minority teachers, teachers with disabilities, and other teachers who have potential for leadership; and

• Operation of programs during the school year or during the summer that provide intensive training using the model curriculum developed by the academy.

Invitational Priority

Within Absolute Priorities 2–7, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that would match funds provided under this priority with funds from non-Federal sources.

Selection Criteria: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Shirley Steele, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: 202–219–1496. 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.

Program Authority: 20 U.S.C. 3151.

Dated: June 11, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–14246 Filed 6–13–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
June 14, 1991

Part VII

Department of Education

Fund for Innovation in Education Program; Applications for New Awards for Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.215E]

Fund for Innovation in Education: Innovation in Education Program; Notice inviting applications for new awards for fiscal year 1991.

Purpose of Program: To provide grants for projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary, and secondary levels.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions or consortia of those entities.

Deadline for Transmittal of Applications: 7–31–91.

Deadline for Intergovernmental Review: 9–28–91.

Applications Available: 6–24–91.

Estimated Available Funds: $3,500,000.

Estimated Range of Awards: $250,000–$500,000.

Estimated Number of Awards: 10–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Budget Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Invitational Priorities: The Secretary is particularly interested in applications for projects that demonstrate effective strategies for—

(a) Improving the performance and employment opportunities of underachieving students. Of special interest are school-based projects designed to help students reach high standards of performance in five core subjects: English, mathematics, science, history, and geography;

(b) Improving and expanding instruction in foreign languages at the elementary and secondary levels. Of special interest are projects to expand instruction in the language of Arabic, Chinese, Japanese, Korean, and Russian at both the elementary and secondary levels; or

(c) Restructuring elementary and secondary schools. Of special interest are projects at the school level designed to achieve comprehensive reform through improvements in areas such as school leadership, organization, decisionmaking, teaching, and curriculum, and the use of technology in the school.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

Supplementary Information: Although the Secretary has chosen to use the EDGAR selection criteria and invitational priorities for this competition, he may establish specific regulations or absolute priorities for other grant competitions.

For Applications or Information Contact: Shirley Steele, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: 202–219–1496. 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.

Program Authority: 20 U.S.C. 3151.

Dated: June 11, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–14191 Filed 6–14–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
June 14, 1991

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Proposed Alteration of the Houston Terminal Airport Control Area and Revocation of the William P. Hobby Airport, Airport Radar Service Area; Proposed Rule

DEPARTMENT OF TRANSPORTION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Airspace Docket No. 90-AWA-12]

RIN 2120-AD04

Proposed Alteration of the Houston Terminal Control Area and Revocation of the Houston William P. Hobby Airport, Airport Radar Service Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Houston, TX, Terminal Control Area (TCA) by expanding the lateral limits. This proposal would establish TCA airspace at the William P. Hobby Airport and would revoke the current Airport Radar Service Area (ARSA) to accommodate the proposed configuration for the Houston TCA. The existing Houston TCA would be nodified to encompass two major airports: Houston Intercontinental and William P. Hobby. The alteration to the Houston TCA would consist of airspace within a 30-mile radius of the Houston Intercontinental Airport and within a 20-mile radius of the William P. Hobby Airport. The airspace would extend from the surface or higher to and including 10,000 feet above mean sea level (MSL). Establishment of TCA airspace at the William P. Hobby Airport would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omnidirectional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate aircraft in the terminal airspace around the Houston Intercontinental and William P. Hobby Airports. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Docket No 90-AWA-12; Notice No., 800 Independence Avenue, SW., Washington, DC 20591.

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

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

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (AIP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90-AWA-12; Notice No. ." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91-78 to part 91 of the Federal Aviation Regulations (FAR) which enabled the establishment of TCAs (35 FR 7782).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of the Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule did not affect the requirement to use a transponder for operation in a TCA.

On June 21, 1988, the FAA published a final rule which required Mode C equipment when operating within 30 miles of any designated TCA-primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) required the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

On May 25, 1990, the FAA published a proposal to suspend, until December 30, 1993, certain provisions of the regulation which require the installation and use of automatic altitude reporting (Mode C) transponders (55 FR 21722; notice no. 90-16). This proposal would provide access to specified outlying airports within 30 miles of a TCA primary airport (Mode C veil) for aircraft without a Mode C transponder. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within ATC radar coverage and not predominantly used by aircraft

required to install and use traffic alert and collision avoidance system (TCAS) equipment.

In the preamble to notice no. 90–16, the FAA stated that a list of airports and specified altitudes below which aircraft operations would be excluded from the Mode C transponder requirement would accompany any NPRM regarding future TCAs. Although the FAA has not yet published a final determination regarding notice no. 90–16, the FAA is listing the airports for the revised Houston TCA Mode C veil in this NPRM to allow full consideration of the impact of the proposed TCA and the Mode C veil. Should the revised Houston TCA be adopted, the effective date of the proposed suspension will be coincident with the effective date of the final rule for the revised Houston TCA.

Aircraft operations without Mode C transponders were proposed to be permitted within a 1.5-nautical-mile (NM) radius of a designated airport from the surface up to a specified altitude. Additionally, aircraft operations without a Mode C transponder would be permitted along the most direct route between that designated airport and the boundary of the Mode C veil, at and below the specified altitude. The routing must be consistent with established traffic patterns, noise abatement procedures, and safety.

Aircraft operations at, to, or from the listed airports would be suspended from the Mode C transponder requirement until December 30, 1993. This time period will accommodate the scheduled upgrading of the present ATC radar system in the vicinity of the Houston Intercontinental and Hobby Airports, and an evaluation period to determine the extent of radar coverage within the Houston TCA Mode C veil as a result of radar system enhancements. Based on the results of this evaluation, the period that the Mode C transponder requirement would be suspended for operations at certain airports may be extended on a site-by-site basis by a notice published in the **Federal Register.**

Operations of aircraft without Mode C transponders at airports not listed by this rule would continue to be safely accommodated in accordance with existing provisions for individual ATC authorizations.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCAs provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCAs. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Pre-NPRM Public Input

Airspace Meetings

The FAA held pre-NPRM airspace meetings on July 20 and 21, 1988, to allow the public and airspace users an opportunity to participate in developing the design for the modified Houston TCA. In attendance were private and student pilots, flight instructors, owners/managers of general aviation airports, as well as representatives from the Texas Aeronautics Commission (TAC), the Air Line Pilots Association (ALPA), the Aircraft Owners and Pilots Association (AOPA), and the Air Transport Association (ATA). During the July 21 meeting, the representatives from AOPA, ATA, and ALPA made statements concerning the configuration of the modified Houston TCA. The participants in the pre-NPRM meetings expressed the following concerns about the proposed alteration to the Houston TCA:

1. A major concern was the establishment of a VFR east/west flyway between Houston Intercontinental Airport and the William P. Hobby Airport. The proposed configuration provides for the establishment of a VFR east/west flyway, 3.5 miles wide, between the airports.

2. Another major concern was the lateral and vertical limits for the proposed TCA around William P. Hobby Airport. Some users requested that the TCA be limited to no more than 20 miles south of William P. Hobby Airport and the ceiling no higher than 10,000 feet MSL. The proposed modification takes into account both requests for the lateral and vertical limits. the FAA recognizes that much of the airspace south of William P. Hobby Airport is over water or adjacent to the Gulf of Mexico and does not generate the volume of traffic to justify a TCA environment.

3. Some users suggested that identifiable landmarks should be used to define the TCA boundary, where feasible. The FAA supports this suggestion and has altered the proposed TCA boundaries along interstate 10 to the east, and along State highway 59 to the west of the Houston Intercontinental and the William P. Hobby Airports.

Houston Ad Hoc Airspace Committee

The Houston Ad Hoc Airspace Committee was created at the time of the July 21 pre-NPRM meeting. The committee consisted of airspace users, fixed-based operators, and other concerned citizens. An FAA representative from the Southwest Region was available to provide the technical support and advice on local air traffic control procedures. The ad hoc committee submitted the following written comments on altering the Houston TCA to the FAA:

1. The committee recommended that the lateral limits of the TCA around Houston Intercontinental Airport remain at the current 20-nautical-mile (NM) limit. The FAA did not propose to adopt this recommendation because of the escalating volume of traffic in the terminal environment, particularly in the airspace north of the airport. Establishing the TCA lateral limits at a 30-NM radius of the airport is necessary to contain air carriers and large turbojets in the controlled TCA environment while sequencing and radar vectoring aircraft for spacing.

2. The committee suggested that the TCA around William P. Hobby Airport be modified to coincide with the lateral limits of the existing ARSA, i.e., a 5-mile radius surface area and 10-mile radius shelf. The FAA offers an alternative to the proposed TCA modification around William P. Hobby Airport: Lateral limits within an 8-NM radius, including the surface area, an 8- to 15-NM radius with a floor of 2,000 feet MSL, and a 15- to 20-NM radius with a floor of 4,000 feet MSL. This configuration would exclude several airports from the surface area, thus allowing for operations to/from airports in an uncontrolled environment.

3. The committee proposed to raise the floor of the TCA south of William P. Hobby Airport between the Hobby (HUB) VOR/DME 145° radial and the HUB 205° radial between the 5- to 10-NM DME arc to 2,000 feet MSL, then between the 10- to 20-NM DME arc to 4,000 feet MSL. This action would accommodate a popular flight training area south of William P. Hobby Airport. The FAA supports this proposal with the following changes: Limits between the HUB 156° radial and the HUB 211° radial, a floor of 2,000 feet MSL between the 6– to 10–NM DME arc, and a floor of 3,000 feet MSL between the 10- to 15–NM DME arc. The floor in the 15–to 20–NM DME area is proposed at 4,000 feet MSL.

Written Comments

In response to the pre-NPRM proposal, 44 written comments were received from individual airspace users and several organizations. The written comments are summarized below.

A fixed base operator with a flight school located on William P. Hobby Airport voiced concern that implementing a TCA recommendations for the TCA design separately. In addition, comments were received from the Spaceland Parachute Center recommending 12–15 mile lateral limits and 7,500 feet MSL ceiling with an exclusion for the Houston Gulf Airport.

The ATA was a participant on the ad hoc committee; however, the association submitted a separate recommendation to the FAA emphasizing its support for a TCA design in accordance with FAA Handbook 7400.2, Procedures for Handling Airspace Matters, which prescribes a 12,500 feet MSL vertical limit and a 30-mile radius outer limit.

ATA's concerns centered on ensuring that all standard instrument approach procedures would be contained within the TCA boundaries encompassing William P. Hobby Airport. ATA emphasized that it would only support a generic TCA design of 12,500 feet MSL and a 30-mile radius.

ALPA acknowledged the need to accommodate the flight schools at William P. Hobby and La Porte Airports. ALPA stated that it vigorously opposed a VFR corridor along Interstate 10. However, the organization will support the concept of a controlled VFR transition route, and requiring pilots to squawk a special code, monitor a discrete frequency, and transition in level flight with aircraft lights illuminated. The ALPA agreed with the ATA on the generic design for the altered Houston TCA.

In addition, one comment suggested that the FAA cancel its endeavor to implement any changes to the current airspace and "leave well enough alone" with a TCA at Houston Intercontinental and an ARSA at William P. Hobby Airport.

Comments received from Cliff Hyde Flying Service, La Porte Airport, supported the concept of TCAs around high traffic airports, expressed concern for the availability of student pilot training areas, and requested assistance to prevent traffic operating to/from Ellington Field from penetrating the La Porte traffic pattern.

The majority of the airspace users support the proposed modification to the Houston TCA. This design accommodates traffic at the La Porte Municipal Airport, allowing unrestricted operation by excluding the airport from the TCA surface area. While the ad hoc committee requested a ceiling of 8,000 feet MSL, the FAA has proposed a 10,000 feet MSL ceiling for the Houston TCA. The FAA has determined, by an evaluation of air traffic procedures and traffic flow, that air carrier and large turbojet aircraft can be contained within the TCA airspace at 10,000 feet MSL, but that a ceiling of 8,000 feet MSL is not adequate for this proposal.

The Proposal

The FAA is considering an amendment to part 71 of the FAR (14 CFR part 71) to alter the TCA at Houston, TX. The proposed modification would establish additional TCA airspace and would revoke the ARSA at William P. Hobby Airport. In 1988, the total number of enplaned passengers at William P. Hobby Airport was 3,847,079, which qualified the airport as a candidate for a TCA. Consequently, the FAA has determined that the establishment of TCA airspace at William P. Hobby Airport is in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in the terminal area. William P. Hobby Airport is currently being served by an ARSA, which would be rescinded with the proposed modification of the Houston TCA. The existing Houston TCA lateral limits would be altered concurrent with the establishment of the proposed configuration for Houston TCA. The proposed modification to the Houston TCA is depicted on the attached chart.

Section 91.131 of the FAR (14 CFR part 91) defines TCAs and prescribes operating rules for aircraft in airspace designated as a TCA. Section 91.131 provides, in part, that before entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; and (4) meet the requirements of § 61.95 of the FAR (14 CFR part 61) if the aircraft is operated by a student pilot.

Any person operating an aircraft arriving at any airport within a TCA or flying through a TCA must have the aircraft equipped with: An operable VOR or TACAN receiver; an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.215 of the FAR, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large, turbine engine-powered aircraft operating to or from a TCA-primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC before takeoff.

All pilots operating within a TCA are required to comply with all ATC clearances and instructions. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCAs may be found in §§ 71.12 and 71.401 of the FAR (14 CFR part 71); and §§ 91.1 and 91.131 of the FAR (14 CFR part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles, respectively. The vertical limits of the TCA are 12,500 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration proposed in this notice is the result of an extensive staff study conducted by FAA authorities after obtaining public input from informal airspace meetings, written comments, the Houston Ad Hoc

Airspace Committee, and coordinating with the FAA regional office.

A unique feature of the proposal is that the proposed TCA for the Houston area is one TCA which would encompass two primary airports instead of one primary airport. The FAA has determined that the proposed alteration of airspace for the Houston area TCA would be consistent with TCA objectives. The proposed configuration considers the existing terminal area flight operations and terrain as follows:

1. That airspace extending upward from the surface to and including 10,000 feet MSL within a 10-mile radius of the Humble (IAH) VORTAC, excluding that airspace south of an east/west line from the IAH 141° radial 10 DME to the IAH 216° radial 10 DME and within an 8-mile radius of the Hobby VOR/DME (HUB), excluding that airspace north of an east/west line from HUB 331° radial 8 DME to the HUB 031° radial 8 DME. The Hobby inner circle would be reduced from the HUB 156° radial to the HUB 211° radial.

This airspace is necessary to contain large turbojet aircraft within the confines of the TCA while operating to and from the primary airports and allow for ingress/egress to secondary airports without affecting the primary airports. The reduction in the inner circle is necessary to accommodate multi-engine aircraft flight training activity. This airspace configuration would provide a VFR east/west flyway, 3.5 miles wide between Houston Intercontinental and William P. Hobby Airports.

2. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL between 10 DME and 15 DME of the IAH VORTAC, excluding that airspace south of the IAH VORTAC on the east side where the 15-mile arc joins the 15-mile arc north of the HUB VOR/DME and on the west side that airspace south of where the 15-mile arc of the IAH VORTAC crosses State highway 59 and northwest of the HUB VOR/DME where the 15-mile arc crosses State highway 59. Included is that airspace between the HUB 156° radial and the HUB 211° radial between 6 and 10 miles DME from the HUB VOR/DME.

This area is necessary to allow sufficient airspace for uncontrolled operations, specifically aircraft landing at and departing from nonprimary airports within the lateral limits. In addition, the airspace between the HUB 156° radial and the HUB 211° radial would allow for flight training activity.

3. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between 15 DME and 20 DME of the IAH VORTAC, excluding that airspace south of where the 20-mile arc crosses interstate 10 to the east of IAH VORTAC and State highway 59 southwest of IAH VORTAC. Also, including that airspace between the HUB 156° radial and the HUB 211° radial between 10 and 15 miles DME from the HUB VOR/DME.

This airspace is necessary to provide sufficient room for sequencing and vectoring arriving and departing aircraft. In addition, the configuration takes into consideration the airspace for aircraft on downwind and on parallel approaches to Houston Intercontinental Airport. The airspace between the HUB 156° radial and the HUB 211° radial is necessary to accommodate multi-engine flight training activity.

4. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL between 20 DME and 30 DME of the IAH VORTAC, excluding that airspace south of Interstate 10 east of IAH VORTAC and State highway 59 southwest of IAH VORTAC. That airspace between 15 DME and 20 DME from the HUB VOR/DME excluding that airspace north of interstate 10 east of Hobby and State highway 59 southwest of Hobby.

This area is necessary to contain aircraft in a controlled environment and allows for adequate airspace for nonparticipating aircraft conducting VFR operations.

The preceding summary of the proposed alteration of the TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Houston Intercontinental Airport and the William P. Hobby Airport. ATC would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this TCA would greatly enhance the safety of flight within the congested airspace overlying the Houston metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Sections 71.401 and 71.501 of the FAR were republished in FAA Handbook 7400.6G, Compilation of Regulations, dated September 4, 1990.

Suspension of Certain Aircraft Operations From the Mode C Transponder Requirement

On December 5, 1990, the FAA published Special Federal Aviation Regulation (SFAR) No. 62 which suspends, until December 30, 1993, certain provisions of the regulation which require the installation and use of automatic altitude-reporting (Mode C) transponders (55 FR 50302). SFAR No. 62 provides access to specified outlying airports within 30 miles of a TCA-primary airport (Mode C veil) for aircraft without Mode C transponders. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within ATC radar coverage and not used predominantly by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment.

SFAR) No. 62 identified 17 airports (within the current Houston Intercontinental TCA Mode C veil) at which operations by aircraft not equipped with Mode C transponders can be conducted at and below 1,200 feet above ground level (AGL): (1) Within a 2-nautical-mile radius of a listed airport; and (2) along a direct route between that airport and the outer boundary of the Mode C veil. Those 17 airports are:

1. Ainsworth Airport, Cleveland, TX (0T6)
2. Biggin Hill Airport, Hockley, TX (TX49)
3. Cleveland Municipal Airport, Cleveland, TX (6R3)
4. Fay Ranch Airport, Cedar Lane, TX (0T2)
5. Freeman Property Airport, Katy, TX (61T)
6. Gum Island Airport, TX (3T6)
7. Harbican Airport, Airpark, Katy, TX (9XS9)
8. Harold Freeman Farm Airport, Katy, TX (8XS1)
9. Hoffpauir Airport, Katy, TX (59T)
10. Horn-Katy Hawk International Airport, Katy, TX (57T)
11. Houston-Hull Airport, Houston, TX (SGR)
12. Houston-Southwest Airport, Houston, TX (AXH)
13. King Air Airport, Katy, TX (55T)
14. Lake Bay Gall Airport, Cleveland, TX (0T5)
15. Lake Bonanza Airport, Montgomery, TX (33TA)
16. R W J Airpark Airport, Baytown, TX (54TX)
17. Westheimer Air Park Airport, Houston, TX (5TA4)

The proposed designation of William P. Hobby Airport as a TCA-primary airport would extend the Houston TCA Mode C veil to include the airspace areas within a 30-nautical-mile radius of Hobby Airport. The FAA has determined that 13 airports would be added to the list of airports for the Houston TCA Mode C veil as a result of the proposed designation of Hobby Airport as a primary airport. The list of the 13 additional airports for the revised Houston TCA Mode C veil primarily comprises those airports located approximately 25 to 30 miles from Hobby Airport and not located within the current Houston Intercontinental TCA Mode C veil. The 13 airports to be added to SFAR No. 62 for the proposed

Houston Intercontinental and Hobby TCA Mode C veil are:

(1) Ausinia Ranch Airport, Texas City, TX (TS50)
(2) Bailes Airport, Angleton, TX (7R9)
(3) Covey Trails Airport, Fulshear, TX (80XS)
(4) Creasy Airport, Santa Fe, TX (5TA5)
(5) Custom Aire Service Airport, Angleton, TX (81D)
(6) Flying C Ranch Airport, Needville, TX (XS25)
(7) Garrett Ranch Airport, Danbury, TX (77XS)
(8) H & S Airfield Airport, Damon, TX (XS21)
(9) HHI Hitchcock Heliport, Hitchock, TX (6TA5)
(10) Johnnie Volk Field Airport, Hitchcock, TX (37R)
(11) Lane Airpark Airport, Rosenberg, TX(T54)
(12) Meyer Field Airport, Rosharon TX (TA33)
(13) Prairie Aire Field Airport, Damon, TX (4TA0)

Two airports identified on the list of 17 airports for the current Houston Intercontinental TCA Mode C veil, Houston-Southwest (AXH), Houston, TX, and Houston-Hull Airport (SGR), Houston, TX, are proposed to be deleted from the list of airports at which operations in noncompliance with the Mode C transponder equipment requirement are permitted. Houston-Southwest Airport is located approximately 13 nautical miles from William P. Hobby Airport. Houston-Hull Airport is located approximately 19 nautical miles from William P. Hobby Airport. Due to the proximity of these airports to William P. Hobby Airport, operations in the vicinity of the Houston-Southwest Airport and Houston-Hull Airport, or along the most direct routing between those airports and the outer boundary of the revised Houston TCA Model C veil, would underlie an area within which controlled traffic to and from a TCA-primary airport may be operating. Therefore, operations in the vicinity of Houston-Southwest and Houston-Hull Airports would no longer meet the criteria for exclusion from the Mode C transponder equipment requirement.

If Houston-Southwest and Houston-Hull Airports were not deleted from the list, aircraft not equipped with a Mode C transponder could operate along unspecified routes between each airport and the outer boundary of the revised Houston TCA Mode C veil. The FAA believes this situation could result in the display of radar targets without associated altitude information on ATC radar scopes, thus adversely affecting the safety benefits associated with the Mode C transponder equipment requirement.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the proposal to the private sector, consumers, and Federal, State, and local governments, and also the 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 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 proposal is not major as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Costs

The FAA estimates the total cost of implementing the proposed rule to be $1.1 million (discounted, 15 years) in 1989 dollars. This estimate represents costs to the FAA for additional personnel and revision of aeronautical charts. GA aircraft operators are not expected to incur any costs as a result of the proposal. These costs are discussed below.

For the FAA, the proposed rule would impose costs for two additional controllers at Houston TRACON. The discounted cost of the two controllers would be $1,056,000 at 10 percent over 15 years. No additional equipment requirements are anticipated as a result of the proposal.

For GA aircraft operators, the proposal would impose no monetary costs for avionics equipment. Costs incurred by aircraft operators without Mode C transponders have already been accounted for by the Mode C rule. The potentially affected GA aircraft operators are assumed to already have the other types of avionics equipment (such as operable two-way radio and VOR) required for entering a TCA. The only aircraft without Mode C transponders would be nonelectrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule.

The FAA does not believe balloonists, parachutists, ultra-light and sailplane owners, or fixed-base operators would be significantly affected by the proposal. Letters of agreement and airspace cutouts are expected to be executed, where advisable, to provide a minimum effect on these operators.

Another cost component of the proposal would be the revision of aeronautical charts to reflect the change of the airspace around the Houston Intercontinental Airport (IAH) and the William P. Hobby Airport (HOU). The change would be incorporated during the routine updating and printing of the charts so that all costs associated with printing aeronautical charts are assumed to be a normal cost of doing business. However, the charts would need to be changed to depict the revised airspace configuration in the Houston TCA. This would require changes to the plates used to print the charts which would depict the modified Houston TCA. These charts include the Sectional, Terminal Area, En Route Low Altitude, En Route Area, and VFR Flyway Charts. The National Oceanic Service, the agency responsible for the publication and distribution of aeronautical charts, estimates the total one-time discounted costs (10 percent, 1 year) of these maps to be $55,000.

Benefits

The proposal is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Enhanced safety would take the form of reduced aviation fatalities and property damage as a result of a lowered likelihood of midair collisions due to increased positive control in the airspace to be established as the Houston TCA. Other benefits would be expected to accrue in the form of

improved operational efficiency of FAA air traffic controllers.

Since deregulation of the airline industry in 1978, passenger enplanements have greatly increased. This has led to large increases in aircraft operations, particularly for part 121 (Large Transport Category) aircraft. As a result of this traffic density, the risk of potential midair collisions has also increased. Since 1978, the FAA has implemented additional regulatory initiatives aimed primarily at mitigating this potential safety problem. These initiatives have included modification of selected TCAs and the conversion of Terminal Radar Service Areas (TRSAs) into ARSAs. Most recently, the FAA has implemented rules expanding Mode C requirements and mandating TCAS on certain aircraft. All of these regulatory actions are aimed at enhancing aviation safety by lowering the likelihood of midair collisions. As a continuation of this effort to enhance aviation safety, the FAA announced in 1987 the proposed conversion of nine ARSAs into TCAs. The proposed establishment of TCA airspace at Houston-Hobby represents one of these TCA initiatives.

The proposed rule is expected to increase benefits in terms of enhanced safety. This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (CNMAC) incidents in lieu of actual midair collisions. Since midair collisions involving part 135 aircraft and especially part 121 aircraft are rare, the use of CNMACs will serve to illustrate the potential improvements in aviation safety of implementing the proposal. The regression analysis used in this evaluation focused on CNMACs and aircraft operations in 23 TCAs and a random sample of 23 of the 79 ARSAs that existed in 1988 (based on CNMAC data for 1986 and 1987). The results of this analysis indicate that TCAs have approximately 68 percent fewer CNMACs annually, on average, than ARSAs. This lower CNMAC rate suggests more efficient separation of aircraft in congested areas.

As the result of these findings, if the ARSA at HOU remained intact and the Mode C and TCAS rules were not in effect, the HOU Terminal Area would be expected to experience an average of 1.6 CNMACs annually or 25 CNMACs over the next 15 years. However, if the ARSA becomes a TCA, this figure is expected to reduce to an average of 0.5 CNMACs annually or 8 CNMACs over the next 15 years. Thus, over the next 15 years, the proposal could result in the reduction of 17 (25–8) CNMACs.

It is important to note that most of these potential CNMACs would not occur as predicted because the Mode C and TCAS rules are in effect and HOU already lies within the current Houston TCA Mode C veil. Subsequently, the safety benefits of the proposal and the Mode C and TCAS rules are inseparable and cannot be estimated independently from each other. The Mode C and TCAS rules are expected to generate total potential safety benefits of $2,129 million (discounted, 15 years).

Another potential benefit of the proposal would be improved operational efficiency of air traffic controllers. Under the proposal, the Mode C transponder requirement would ease controller workload per controlled aircraft because of the reduction in radio communications. It also would make potential traffic conflicts more readily apparent to the controller. Because of improved operational efficiency, the impact of controller workload would be somewhat offset by the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA. There would be other types of benefits made possible by the additional ATC personnel in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. Therefore, the potential benefits of improved operational efficiency, which are difficult to quantify in monetary terms in this evaluation, would also be attributed to this proposed rule.

The proposed modification would alter the current Houston TCA in two ways. First, the proposal would convert the ARSA at HOU into TCA airspace. The benefits associated with converting the ARSA were discussed above. Second, the proposal would expand the TCA airspace currently around IAH by raising the ceiling over IAH from 7,000 feet MSL to 10,000 feet MSL and by extending the outer boundary to 30 nautical miles. This proposed expansion of TCA airspace around IAH would yield potential benefits in the way of a lowered likelihood of CNMACs and efficiency gains for ATC, especially in light of the increasing number of aircraft operations and passenger enplanements at IAH. However, because a TCA is already established around IAH, the FAA contends that the proposed expansion of TCA airspace around IAH would not reduce CNMACs to the extent the conversion of the ARSA at HOU would.

Comparison of Benefits and Costs

The total cost to implement the proposed Houston TCA is estimated to be $1.1 million (discounted, 15 years). The potential safety benefits of the rule would be the lowered likelihood of midair collisions from the proposed conversion of the present Houston ARSA to a TCA. The precise number of midair collisions avoided and their respective monetary values cannot be estimated independent of the Mode C and TCAS rules. However, the FAA contends that even if the Mode C and TCAS rules were not in effect, the estimated cost of the proposed TCA, relative to the reduction in the likelihood of midair collisions and the improved operational efficiency of ATC, makes the proposal cost-beneficial. In addition, even when the potential cost of the proposed TCA is added to the costs of other TCAs and ARSAs (only those established since phase I of Mode C) plus the costs of the Mode C and TCAS rules, the total collective costs, $814.8 million, are still less than the total collective benefits, $2,129 million.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." As stated in the Cost section of this evaluation, the proposal would have no monetary impact on the aviation public and, therefore, it would have no cost impact on small entities. Thus, a regulatory flexibility analysis is not required.

International Trade Impact Assessment

The proposed rule would only affect U.S. terminal airspace operating procedures at and in the vicinity of the Houston TCA. The proposed rule would not impose a competitive trade advantage or disadvantage on foreign firms in the sale of aviation products or services in the United States. In addition, domestic firms would not incur a competitive trade advantage or disadvantage in the sale of United States aviation products or services in foreign countries.

Federalism Implications

This proposed regulation 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, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not major under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Parts 71 and 91

Aircraft, Airport radar service areas, Air traffic control, Automatic altitude reporting equipment, Aviation safety, Mode C veil, Terminal control areas, Transponder.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 91 of the Federal Aviation Regulations (14 CFR parts 71 and 91) 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.

§ 71.401(b) [Amended]

2. § 71.401(b) is amended by revising the Houston, TX, description to read as follows:

Houston, TX [Revised]

Primary Airports

Houston Intercontinental Airport (lat. 29°58'49"N., long. 95°20'22"W.)
William P. Hobby Airport (lat. 29°38'43"N., long. 95°16'43"W.)
Humble VORTAC (IAH) (lat. 29°57'24"N., long 95°20'44"W.)
Hobby VOR/DME (HUB) (lat. 29°39'00"N., long. 95°16'44"W.).

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at lat. 29°49'24"N., long. 95°13'49"W.; to lat. 29°49'30"N., long. 95°27'49"W., thence clockwise along the Humble VORTAC(IAH) 10-mile DME arc to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45'36"N., long. 95°21'57"W.; to lat. 29°45'45"N., long. 95°11'46"W.; thence clockwise along the Hobby VOR/DME (HUB) 8-mile DME arc to lat. 29°31'40"N., long. 95°13'00"W.; to lat. 29°33'30"N., long. 95°13'56"W. (HUB 156°T(150°M)); thence clockwise along the HUB VOR/DME 6-mile arc to lat. 29°33'51"N., long. 95°20'16"W.; to lat. 29°32'07"N., long. 95°21'27"W. (HUB 211°T(205°M)), thence clockwise along the HUB VOR/DME 8-mile arc to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the HUB VOR/DME 15-mile arc (lat. 29°39'09"N., long. 95°33'51"W.), thence counterclockwise along the HUB VOR/DME 15-mile arc to the intersection of HUB VOR/DME 15-mile arc and the IAH VORTAC 15-mile arc, thence counterclockwise along the IAH VORTAC 15-mile arc to the intersection of the IAH VORTAC 15-mile arc and Westheimer Road (lat. 29°44'06"N., long. 95°28'46"W.), thence southwest to and along State Highway 59 to the point of beginning excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 20-mile DME arc (lat. 29°40'21"N., long. 95°32'34"W.), thence clockwise along the IAH VORTAC 20-mile DME arc to the intersection of the IAH VORTAC 20-mile DME arc and Interstate 10 (lat. 29°48'00"N., long. 95°00'37"W.), west on Interstate 10 to the HUB VOR/DME 15-mile arc (lat. 29°47'37"N., long. 95°02'36"W.), thence counterclockwise along the HUB VOR/DME 15-mile arc to the IAH VORTAC 15-mile DME arc (lat. 29°50'23"N., long. 95°05'28"W.), thence counterclockwise along the IAH VORTAC 15-mile DME arc to the intersection of the IAH VORTAC 15-mile DME arc and Westheimer Road (lat. 29°44'06"N., long. 95°28'46"W.), thence southwest to and along State Highway 59 to the point of beginning; and that airspace bounded by a line beginning at lat. 29°25'16"N., long. 95°09'44"W.; to lat. 29°29'50"N., long. 95°12'04"W., thence clockwise along the HUB VOR/DME 10-mile arc to lat. 29°30'24"N., long. 95°22'38"W.; to lat. 29°26'06"N., long. 95°25'34"W., thence counterclockwise along the HUB VOR/DME 15-mile arc to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 30-mile DME arc (lat. 29°33'34"N., long. 95°41'20"W.), thence clockwise along the IAH VORTAC 30-mile DME arc to Interstate 10 (lat. 29°49'55"N., long. 94°47'35"W.), west along Interstate 10 to the HUB VOR/DME 20-mile arc (lat. 29°48'40"N., long. 94°56'52"W.), thence clockwise along the HUB VOR/DME 20-mile arc to State Highway 59 (lat. 29°34'36"N., long. 95°38'57"W.), thence southwest on State Highway 59 to the point of beginning excluding Areas A, B, and C.

§ 71.501 [Amended]

3. § 71.501 is amended by removing the Houston William P. Hobby, TX, description.

Houston William P. Hobby, TX [Removed]

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

5. SFAR No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement [Amended].

SFAR No. 62, Sec. 2., paragraph (10) would be revised as follows:

(10) Airports within a 30-nautical-mile radius of the Houston Intercontinental Airport and the William P. Hobby Airport.

Airport name	Arpt ID	Alt. (AGL)
Ainsworth Airport, Cleveland, TX.	0T6	1,200
Ausinia Ranch Airport, Texas City, TX.	TS50	1,200
Bailes Airport, Angleton, TX	7R9	1,200
Biggin Hill Airport, Hockley, TX	TX49	1,200
Cleveland Municipal Airport, Cleveland, TX.	6R3	1,200
Covey Trails Airport, Fulshear, TX.	80XS	1,200
Creasy Airport, Santa Fe, TX	5TA5	1,200
Custom Aire Service Airport, Angleton, TX.	81D	1,200
Fay Ranch Airport, Cedar Lane, TX.	0T2	1,200
Flying C Ranch Airport, Needville, TX.	XS25	1,200
Freeman Property Airport, Katy, TX.	61T	1,200
Garrett Ranch Airport, Danbury, TX.	77XS	1,200
Gum Island Airport, Dayton, TX	3T6	1,200
H&S Airfield Airport, Damon, TX.	XS21	1,200

Airport name	Arpt ID	Alt. (AGL)
Harbican Airpark Airport, Katy, TX.	9XS9	1,200
Harold Freeman Farm Airport, Katy, TX.	8XS1	1,200
HHI Hitchcock Heliport, Hitchcock, TX.	6TA5	1,200
Hoffpauir Airport, Katy, TX	59T	1,200
Horn-Katy Hawk International Airport, Katy, TX.	57T	1,200
Johnnie Volk Field Airport, Hitchcock, TX.	37R	1,200
King Air Airport, Katy, TX	55T	1,200
Lake Bay Gall Airport, Cleveland, TX.	0T5	1,200
Lake Bonanza Airport, Montgomery, TX.	33TA	1,200
Lane Airpark Airport, Rosenberg, TX.	T54	1,200
Meyer Field Airport, Rosharon, TX.	TA33	1,200
Prairie Aire Field Airport, Damon, TX.	4TA0	1,200
R W J Airpark Airport, Baytown, TX.	54TX	1,200
Westheimer Air Park Airport, Houston, TX.	5TA4	1,200

Issued in Washington, DC, on June 7, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

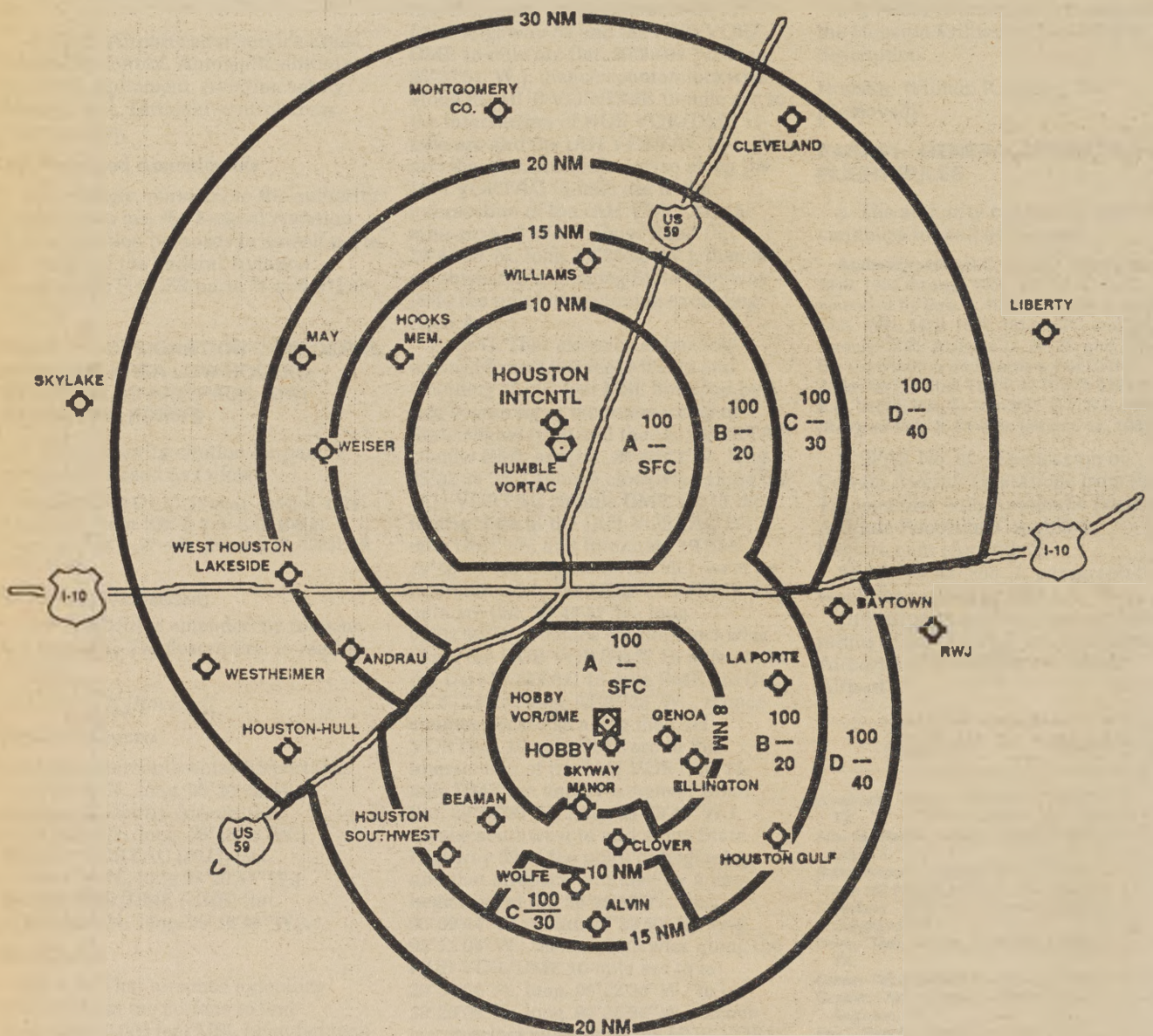
BILLING CODE 4910-13-M

HOUSTON, TEXAS
TERMINAL CONTROL AREA

HOUSTON INTERCONTINENTAL AIRPORT
FIELD ELEVATION- 98 FEET

HOBBY AIRPORT
FIELD ELEVATION - 47 FEET

(Not to be used for navigation)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP - 220)

[FR Doc. 91-14174 Filed 6-13-91; 8:45am]
BILLING CODE 4910-13-C

federal register

Friday
June 14, 1991

Part IX

Department of Education

Educational Research Grant Program: Dissemination of Educational Research; Applications for New Awards; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117L]

Educational Research Grant Program: Dissemination of Educational Research; Applications for New Awards for Fiscal Year (FY) 1991.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program, the regulations for the Educational Research Grant Program (ERGP), and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a cooperative agreement under this competition.

Purpose of Program: The Educational Research Grant Program (ERGP) supports scientific inquiry designed to advance educational theory and practice.

Eligible Applicants: The following are eligible for awards under the Educational Research Grant Programs: (a) Institutions of higher education; (b) Public and private organizations, institutions, and agencies; and (c) Individuals.

Supplementary Information: In 1990 the President and the Governors of the United States agreed upon the following six National Education Goals:

Goal 1—Readiness for School—By the year 2000, all children in America will start school ready to learn.

Goal 2—High School Completion—By the year 2000, the high school graduation rate will increase to at least 90 percent.

Goal 3—Student Achievement and Citizenship—By the year 2000, American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

Goal 4—Science and Mathematics—By the year 2000, U.S. students will be first in the world in science and mathematics achievement.

Goal 5—Adult Literacy and Lifelong Learning—By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Goal 6—Safe, Disciplined, and Drug-Free Schools—By the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

What we have learned from research and effective practice about ways to achieve the National Education Goals can be made available to teachers, parents, and the general public in clear and useful ways without sacrificing accuracy or validity. Making this information available to the more than 2.5 million teachers, to the more than 110,000 principals, to the more than 92,000 school board members, and to the parents of more than 45 million school-aged children is a key first step in moving the country toward achieving the National Education Goals.

Deadline for Transmittal of Applications: August 9, 1991.

Available Funds: $2,000,000.

Estimated Range of Awards: $400,000—$1,000,000.

Estimated Number of Awards: 2 to 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement, part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses); and (b) The regulations for this program in 34 CFR part 700.

Eligible Activity: Under 34 CFR 700.3(a) and (b), the Secretary restricts applications under this competition to those proposing the following activity: Dissemination of educational research. Only applications proposing to conduct this activity will be considered under this competition.

Invitational Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in supporting projects that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

The Secretary particularly invites applications for projects that would develop innovative, high-quality videotapes and supplementary materials, including users' guides, that disseminate information about strategies that will move the country toward achieving each of the National Education Goals.

The Secretary encourages the development of videotapes that are directed toward teachers, parents, and the general public. The content of the videotapes and supplementary materials must be based upon appropriate research findings and effective practices.

The Secretary is particularly interested in projects that include mechanisms for review to ensure that the information provided in the products and supplementary materials is useful to the intended audiences and based on valid research and effective practice. This quality control and review process should permit evaluation of the product by the Department at a number of stages in the development and production process.

In addition to supporting the production of videotapes and supplementary materials, the Secretary anticipates supporting grantee dissemination of some of the videotapes funded under this competition. The Secretary intends to disseminate some videotapes directly. Therefore, the Secretary is particularly interested in projects that include innovative dissemination plans.

Special Concerns Related to the Production of Audio-Visual Materials: The production of audio-visual materials under a cooperative agreement raises certain issues related to copyright, rights and releases from talent and other contributors, commercialization, and close-captioning. The Secretary retains complete discretion to establish the terms and conditions of the cooperative agreement in these areas, but provides for the guidance of applicants the following discussion of how the Secretary intends to handle these issues.

Copyright: The Department is concerned that materials produced under the cooperative agreement receive the widest possible distribution. The Department foresees permitting two copyright options calculated to promote broad distribution of the materials by the grantee directly or by others at the discretion of the Department.

To facilitate a broad distribution of materials produced under the cooperative agreement, the Department foresees permitting the grantee to copyright the materials and assigning, by acceptance of funding under the cooperative agreement, copyright to the Department for a term of ten years in all copyrightable materials produced by the

grantee under the cooperative agreement. Such assignment to the Department, inasmuch as it would be based upon the grantee's acceptance of the terms and conditions of the cooperative agreement, would be automatic and would require no further documentation by the grantee.

Alternatively, the Department foresees permitting the grantee to copyright the materials and provide to the Department (by no later than the end of the project period) a license for a term of ten years in all copyrightable material produced under the cooperative agreement. The license would be coterminous in every respect with the grantee's copyright sufficient to permit the Department, among other things, to distribute, reproduce, exhibit, or otherwise use, and allow others to so use, the materials produced under the cooperative agreement in furtherance of the dissemination objectives of this competition. The Department expects that materials developed under the cooperative agreement would be first produced under the agreement. If the materials contain other copyrighted materials, the Department expects that the grantee would secure releases, licenses or permission to permit non-infringing use of such materials by the Government or others at any time in the future, and provide the Department with evidence of those releases by no later than the end of the project period.

Under either alternative described above, the grantee could claim initial copyright in materials produced under the cooperative agreement.

Rights and Releases: The Department is also concerned about obtaining from the grantee, as necessary, such releases from talent and other contributors to the materials developed under the cooperative agreement as shall be necessary to permit authorized and non-infringing worldwide performance and exhibition rights without payment of further compensation to any party. It is anticipated that the grantee would provide satisfactory evidence of such rights and releases to the Department by no later than the end of the cooperative agreement period.

These rights and releases should at a minimum include releases from all persons recognizably photographed, recorded or otherwise depicted in audio-visual materials produced in the cooperative agreement, including, if necessary, releases from parents or guardians of minor children; worldwide music and exhibition rights; and the right to translate performers' dialogue into foreign languages and other means of communication.

Commercialization: The Department is further concerned that audio-visual materials produced under the cooperative agreement refrain from commercialization through the implied or actual endorsement of products or services that are photographed or otherwise portrayed in such a way as to be identifiable by the viewer.

Close-captioning: The Department expects that videotapes produced under this competition be close-captioned for the hearing impaired.

Selection Criteria: (a)(1) In evaluating applications for new cooperative agreements under this competition, the Secretary uses the selection criteria in 34 CFR 700.22, which are listed in paragraph (b) of this section.

(2) The program regulations in 34 CFR 700.20(b)(2) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 25 points distributed in accordance with 34 CFR 700.20(b)(4).

(3) For this competition the Secretary distributes the 25 points as follows:

(i) Significance (34 CFR 700.22(f)). Ten points are added to this criterion for a total of 25 points.

(ii) Commitment and capacity (34 CFR 700.22(h)). Fifteen points are added to this criterion for a total of 15 points.

(4) The maximum score for each criterion is indicated in parentheses.

(b)(1) *Plan of operation* (10 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(ii) The quality of the applicant's plans to use its resources and personnel to achieve each objective of the project; and

(iii) The extent to which the applicant will equitably address the educational needs of students and educators in both public and private educational institutions.

(2) *Quality of key personnel* (20 points).

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the principal investigator;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(2)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(3) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

(4) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(6) *Significance* (25 points).

(i) The Secretary reviews each application to determine the significance of the proposed project.

(ii) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(A) Importance of the proposed project from the standpoint of basic knowledge or of problems in American education;

(B) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied;

(C) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(D) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(7) *Technical soundness* (15 points).

(i) The Secretary reviews each application to determine the technical soundness of the proposed activities.

(ii) The Secretary determines—

(A) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(B) The extent to which the application exhibits a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(C) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(8) *Applicant's commitment and capacity* (15 points). The Secretary determines the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.117–L), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.117–L), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For further information contact: Dr. Robert Stonehill, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610 Capitol Place, Washington, DC 20208–5644. Telephone: 202–219–2088. FAX: 202–219–1817. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 703–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: June 12, 1991.

Bruno V. Manno,

Acting Assistant Secretary, Educational Research and Improvement.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State H Independent School Dist
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 1 7L

TITLE: Educational Research Grant Program: Dissemination of Educational Research

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Part III—Application Narrative

A. *Application instructions for new awards:*

1. Information on who is eligible to apply for a cooperative grant award can be found in section 700.2 of the Final Regulations for the program.

2. In order to be considered for funding you must submit an *original* and two copies (and *in order to expedite the review and award process, it is strongly suggested that you voluntarily submit three additional copies*).

B. *Instructions for proposal narrative:*

1. Research Priorities

Applicants are invited to address the priority published in the **Federal Register** Notice Inviting Applications contained in this application package.

2. Proposal Narrative

a. Applicants must provide a proposal narrative not to exceed 80–100 double spaced typed pages (normal sized type, no smaller than 10 point pica). The narrative must address each of the following criteria contained in 34 CFR 700.22:

(1) Plan of operation
(2) Quality of key personnel
(3) Budget and cost-effectiveness
(4) Evaluation plan
(5) Adequacy of resources
(6) Significance
(7) Technical soundness

Under the discussion of technical soundness, applicants should describe in detail and justify the procedures that will be used to carry out the proposed work.

b. Applicants are encouraged to provide a summary of the program project (not to exceed 500 words).

3. Budget Information

Applicants must provide a detailed budget for each project and activity to support the request in the budget information form (SF 424A). The cost categories for the detailed budget for each project must be consistent with the cost categories in the summary budget information form. (Instructions are included.)

Provide (at line 21 and attached sheets) a breakdown detailing individual units or activities and amount for each "object class category." For example, for "personnel," show salaries and wages for each staff member by position or name; for "contractual," show consultants, sub-contractual services, materials.

4. Technical Assistance

Any questions regarding a competition should be addressed to the contact person named in the notice inviting applications contained in this package.

5. Reporting Requirements

Each applicant should consider reporting requirements in developing the plan of operation. Performance of financial reports are required at the completion of each project period. Additional guidance will be given prior to the time that the cooperative agreement is awarded.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 27 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0651, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0651. Expiration date: November 30, 1993.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

---

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

---

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV 12/88) which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes 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. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

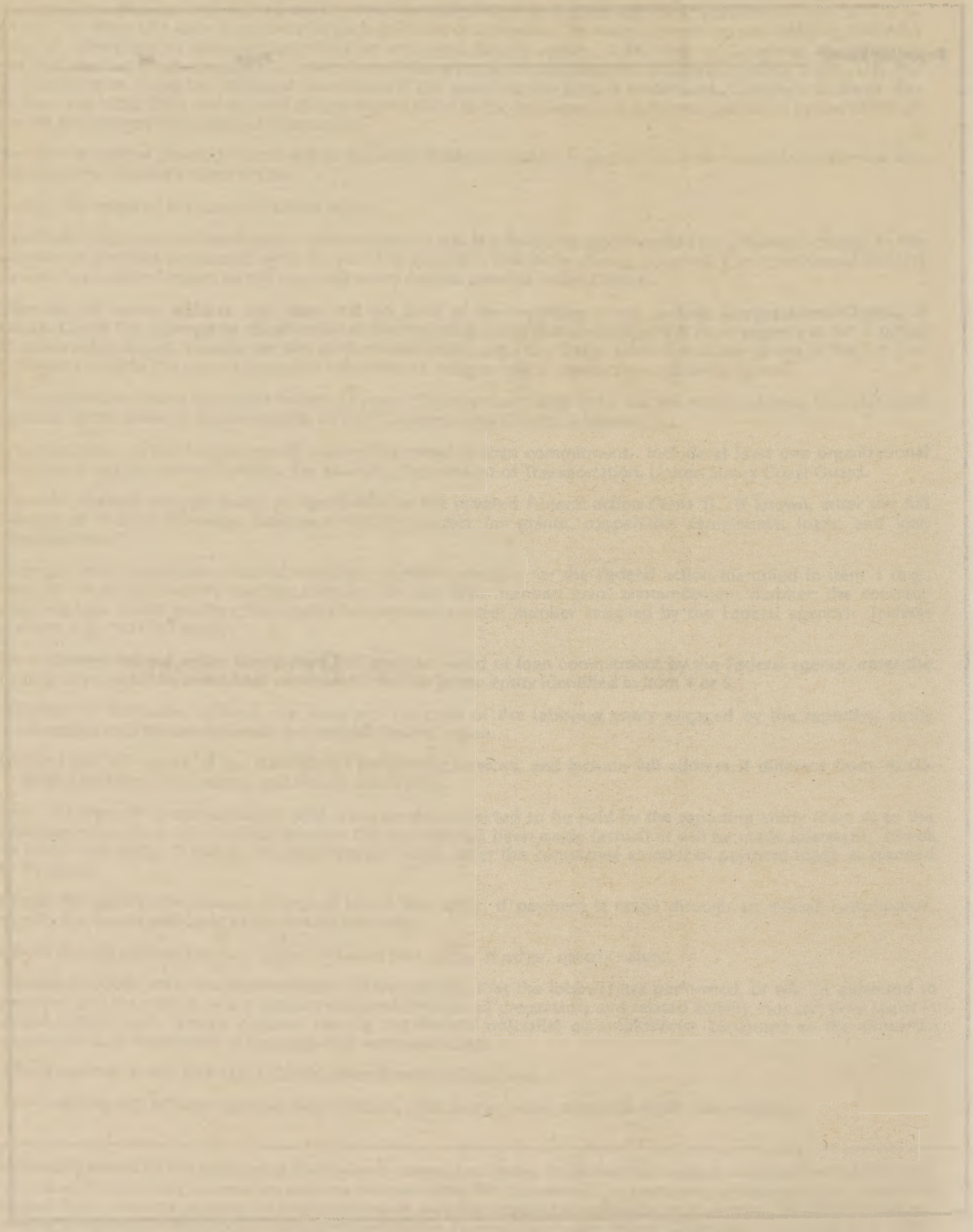
DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 91-14325 Filed 6-13-91; 8:45 am]
BILLING CODE 4000-01-C



federal register

Friday
June 14, 1991

Part X

The President

Proclamation 6305—Pediatric AIDS Awareness Week, 1991

Presidential Documents

Federal Register
Vol. 56, No. 115
Friday, June 14, 1991

Presidential Documents

Title 3—

The President

Proclamation 6305 of June 12, 1991

Pediatric AIDS Awareness Week, 1991

By the President of the United States of America

A Proclamation

Acquired Immune Deficiency Syndrome (AIDS) is always tragic, but especially so among children. According to the U.S. Department of Health and Human Services, 2,800 cases of pediatric AIDS have been reported in this country since 1982. That figure is expected to rise to between 6,000 and 20,000 in the next few years. AIDS is already the ninth leading cause of death among children between the ages of one and four, and it is expected that, during the 1990s, the disease will become an even more significant cause of death among children.

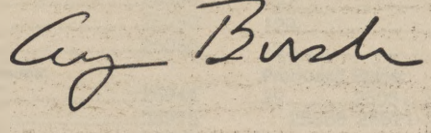
Women who are infected with the human immuno-deficiency (HIV) virus can transmit the virus to their infants during pregnancy or at birth. Currently, about 84 percent of the AIDS cases in children result from perinatal transmission. The outlook for HIV-infected babies is grim. Almost half of these children develop AIDS in their first year, and nearly 70 percent develop AIDS by the end of their second year. The median survival time from diagnosis is 38 months, and it is only 6 months for babies who are diagnosed with AIDS in their first year of life. Moreover, a disproportionate number of HIV-infected mothers are black or Hispanic, poor, or residents of the inner city; many of them will not survive to care for their babies.

As part of their overall fight against AIDS, researchers at the National Institutes of Health are studying ways to prevent transmission of the HIV virus from mother to infant. They are also investigating ways to diagnose the infection in babies at the earliest possible moment. The Federal Government and many private organizations throughout the United States are also working diligently to educate the public about AIDS and to discourage the behaviors that can put parents and their children at risk.

To enhance public awareness of pediatric AIDS, the Congress, by House Joint Resolution 91, has designated the week of June 10 through June 16, 1991, as "Pediatric AIDS Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of June 10 through June 16, 1991, as Pediatric AIDS Awareness Week. I call upon health organizations, the communications media, and the people of the United States to observe this week with appropriate programs and activities.

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



[FR Doc. 91-14433
Filed 6-13-91; 10:57 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 56, No. 115

Friday, June 14, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

25005-25344.....3
25345-25608.....4
25609-25992.....5
25993—26322.....6
26325-26588.....7
26589-26758.....10
26759-26894.....11
26895-27188.....12
27189-27402.....13
27403-27686.....14

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6179 (See Proc. 6301).....26887
6300.....25609
6301.....26887
6302.....27189
6303.....27397
6304.....27399
6305.....27685
Executive Orders:
11157 (Amended by EO 12762).....25993
12748 (See 12764).....26587
12762.....25993
12763.....25994
12764.....26587
12765.....27401
Administrative Orders:
Presidential Determinations:
No. 91-37 of May 29, 1991.....25611
No. 91-39 of June 3, 1991.....27187

5 CFR

890.....25995
1620.....26722
Proposed Rules:
930.....26942

7 CFR

2.....25997
30.....25613
46.....26759
56.....25721
301.....26191
354.....26895
777.....25345
948.....26895
953.....26895
958.....26895
1230.....26589
1421.....26853
1477.....26761
1493.....25998
1494.....25005, 26323
1610.....26590
1700.....25348
1735.....26590
1737.....26590
1744.....26590
1951.....25350
1965.....25350
Proposed Rules:
801.....26944
1005.....25375
1435.....26777
3403.....25600

8 CFR

209.....26897
214.....26016
251.....26016
258.....26016
280.....26019
Proposed Rules:
214.....27211
274a.....27211

9 CFR

Proposed Rules:
11.....26043
166.....26898

10 CFR

Proposed Rules:
20.....26945
35.....2689545
73.....26782

12 CFR

25.....26899
228.....26901
265.....25614
345.....26903
563e.....26904
1609.....25352
Proposed Rules:
207.....25641
220.....25641
936.....26346
1507.....26352

13 CFR

Proposed Rules:
122.....25378

14 CFR

39.....25021, 25353-25362, 26020-26024, 26325, 26601-26612, 26762, 26906-26908, 27403-27559
61.....27160
63.....27160
65.....27160
71.....26025, 26026, 26719, 27191
73.....26026
75.....26326
97.....26027, 27404
121.....25450
125.....25450
127.....25450
129.....25450
135.....25450
Proposed Rules:
39.....25051, 25052, 25379, 25380, 26621-26624, 27467, 27468

71 ..... 25381, 25382, 26025, 26355, 26625, 26626, 27217, 27654
73 26356
75 ..... 25382, 26627
91 27654
399 27469

15 CFR

295 25363
775 25022
776 25022
779 25022
785 25022
799 ..... 25022, 25023
Proposed Rules:
771 25054
777 ..... 25054, 27298

16 CFR

305 26763
Proposed Rules:
1500 25721

17 CFR

200 27194
270 26028
Proposed Rules:
200 27582
210 27562
229 27612
230 27564–27582
239 27564–27582
240 ..... 25056, 27582–27612
249 27612
260 27582

18 CFR

2 27194

19 CFR

4 27559
24 25721
162 25363
Proposed Rules:
162 25383

20 CFR

323 26327
404 26030
416 25446

21 CFR

5 25024
14 26613
177 25446
510 27196
1306 25025
Proposed Rules:
155 25385
201 26946
211 26719
331 26946
1310 27471
1313 27472

22 CFR

89 26853
521 25027
Proposed Rules:
43 25386

23 CFR

Proposed Rules:
650 25392

24 CFR

235 27662
750 27070–27104
885 27104
889 27104
890 27070
Proposed Rules:
905 26628
965 26628

26 CFR

31 26191
42 25364
602 25364
Proposed Rules:
156 26631

28 CFR

0 25628
51 26032
Proposed Rules:
20 25642

29 CFR

1910 26909
2619 27405
2676 27406
Proposed Rules:
578 25168
2550 26045

30 CFR

220 26032
700 25036
840 25036
842 25036
904 27407
913 26191
935 26032
Proposed Rules:
916 27473

31 CFR

570 26034

32 CFR

199 25039
286i 26613
295 26613
552 25039
286b 25629
2003 27559
Proposed Rules:
156 26634
199 ..... 26635, 26946

33 CFR

100 ..... 25042, 26324–26335, 26764
117 ..... 25369, 26765, 26909
165 ..... 25630–25632, 26766–26768, 27409
Proposed Rules:
100 26357
117 ..... 25397, 26358, 26792, 26948
241 27218
242 25643

34 CFR

Proposed Rules:
318 27474
325 26856
328 27481

36 CFR

251 27410
293 27410
1222 26336

37 CFR

201 27196
202 27196
Proposed Rules:
1 26949

38 CFR

1 25043
3 25043
21 ..... 25045, 26035
Proposed Rules:
3 ..... 25399, 25645
8 25649
13 25399
21 26951

39 CFR

Proposed Rules:
111 ..... 25059, 26641

40 CFR

52 27197
86 25724
141 26460
142 ..... 25046, 26460
180 26911–26915
185 26915
261 27300–27332
264 27332
265 27332
721 25986
Proposed Rules:
51 27630
52 ..... 26359, 27630
60 27630
63 27338
156 27484
170 ..... 27484, 27485
228 26641
744 27222
761 26738

42 CFR

412 25458
418 26916
Proposed Rules:
405 25792
412 25178
413 25178
415 25792

43 CFR

Public Land Orders:
6861 26035

44 CFR

64 26337
Proposed Rules:
67 26954

45 CFR

57 25446
98 26240
99 26240
233 27419

46 CFR

Proposed Rules:
515 27485
560 27485
572 27485
586 26361

47 CFR

1 ..... 25633, 25635
2 26616
15 27200
36 27421
43 25370
64 ..... 25370, 25721
73 ..... 25635, 26298, 26338–26339, 26919–26921, 27422–27424
90 ..... 25639, 26719
97 25372
Proposed Rules:
Ch. I 25400, 26644
22 26967
73 ..... 26365–26368, 26968
90 25650

48 CFR

52 ..... 25446, 27298
519 ..... 26769, 26921
705 27207
706 27207
719 27207
726 27207
752 27207
2801 26340
2803 26340
2804 26340
2805 26340
2806 26340
2815 26340
2819 26340
2870 26340
Proposed Rules:
209 26645
232 25446
242 26645
243 26719
249 26719
252 ..... 25446, 26719
Ch. 99 26968

49 CFR

1 25050
195 26922
571 ..... 26036, 26039, 26343, 26927, 27427
575 26769
Proposed Rules:
212 27222
225 25651
245 26368
571 ..... 26046, 26368
1011 26370–26372
1160 26370–26372
1181 26370–26372
1186 26370–26372

50 CFR

17 27438
18 27443
32 26620
630 26934
651 26774
658 25374
661 26774
672 27465
675 26620
683 27298
685 27558
Proposed Rules:
17 ..... 26373, 26969–26971, 27485

23.....25447
215.....25066
650.....27225

LIST OF PUBLIC LAWS

Last List June 12, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.R. 831/Pub. L. 102-53

To designate the Owens Finance Station of the United States Postal Service in Cleveland, Ohio, as the "Jesse Owens Building of the United States Postal Service". (June 10, 1991; 105 Stat. 266; 1 page) Price: $1.00

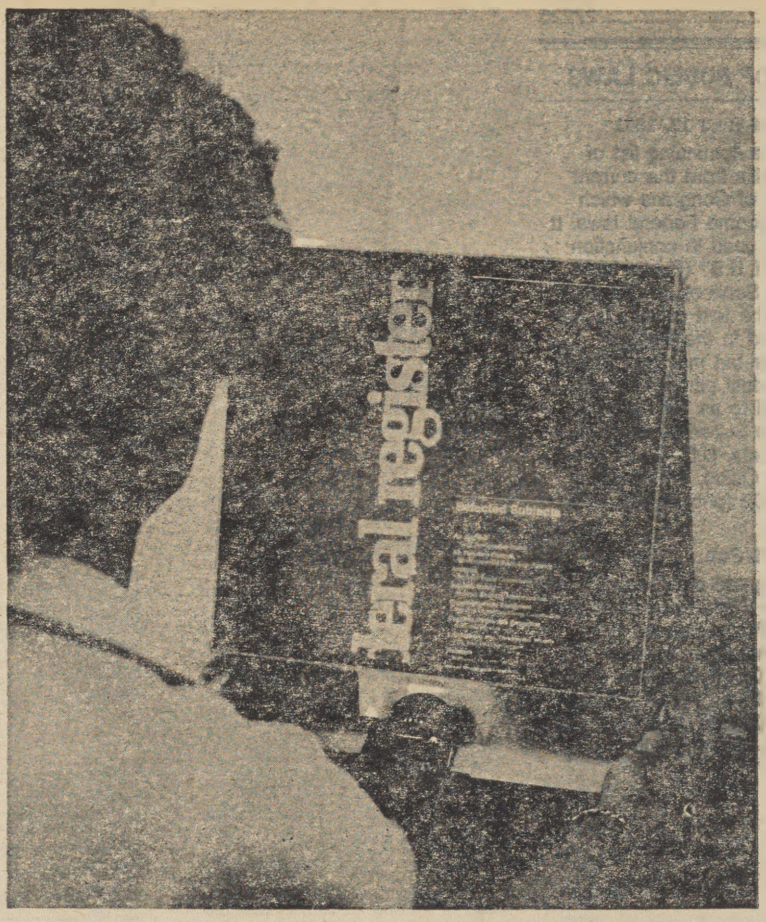
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6462**

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ **Federal Register:** ____ One year: $195 ____ Six months: $97.50

____ **Code of Federal Regulations:** ____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)_____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)