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Presidential Documents

Title 3—

The President

Proclamation 6345 of October 3, 1991

Veterans Day, 1991

By the President of the United States of America

A Proclamation

Memory is the first measure of gratitude—those who are truly grateful do not forget the service that has been rendered for their sake. Each November we Americans remember in a special way the veterans of the United States Armed Forces. Through their vigilance, courage, and sacrifice, these individuals have helped to secure the freedoms that we so enjoy today—the freedoms that we can sometimes, all too easily, take for granted.

Since President Woodrow Wilson asked that all Americans pause on November 11, 1919, in honor of the Nation's war heroes, Americans have set aside this date to remember and pray for all those patriots who have put themselves in harm's way to defend the lives and liberty of others. As we salute our Nation's veterans, we also remember with solemn pride their fallen comrades, including those heroes who rest "in honored glory . . . known but to God."

There is no irony in the fact that we honor this country's war veterans on the anniversary of Armistice Day, a day dedicated to peace. As was the case during Operation Desert Storm, members of the U.S. military have engaged in armed conflict only as a last resort, only to defend freedom and the rule of law. And we know that these ideals form the only sure foundation for lasting peace among nations.

America's veterans have faced the hellish fires of combat and the chilling presence of mortal danger so that our children and our children's children might dwell in a safer, more peaceful world. The freedom of millions of people around the globe is, in many ways, a living monument to each of them.

Today thousands of veterans continue to serve our Nation through their families and their communities, helping others to appreciate more fully the value of freedom and the importance of patriotism. These contributions we also remember with thankfulness and pride.

Of course, while memory is the first measure of gratitude, its fullest and most meaningful expression is found in word and deed. We can never repay our veterans for all that they have endured for our sake, but we can show by our actions—on this day and every day of the year—that their great sacrifices are indeed cherished and remembered. Whether we do so on our own or through our schools, businesses, and community organizations, let us convey our thanks to veterans through acts of generosity and kindness. Let us demonstrate, in a special way, our respect and concern for those former service members who are hospitalized or disabled.

In order that we may pay due tribute to those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Monday, November 11, 1991, as Veterans Day. I urge all Americans to honor our veterans through appropriate public ceremonies and private prayers. I also call on Federal, State, and local government officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, churches, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, 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 sixteenth.

George Bush

[FR Doc. 91-24260
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Rules and Regulations

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 299, 310, 312, 313, 315, 316, 316a, 319, 322, 324, 325, 327, 328, 329, 330, 331, 332, 332a, 332b, 332c, 332d, 333, 334, 334a, 335, 335a, 335c, 336, 337, 338, 339, 340, 343b, 344 and 499

[INS No. 1435-91: AG Order No. 1535-91]

RIN 1115-AC58

Administrative Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Immigration Act of 1990, Public Law 101-649 (IMMACT) conferred upon the Attorney General, as of October 1, 1991, the responsibility for making final determinations on applications for naturalization. The purpose of this interim regulation is threefold: To implement the new administrative system; to codify, in regulatory form, the essential substantive and procedural requirements for naturalization created by statute and interpreted by judicial precedent; and to make technical and administrative changes to the Code of Federal Regulations as necessary. This rule will increase efficiency in administering the naturalization provisions and will provide additional guidance and clarification to Service officials.

DATES: This interim rule is effective October 1, 1991. Written comments must be submitted no later than November 21, 1991.

ADDRESSES: Please submit written comments in triplicate to Director, Policy Directives and Instructions Branch, Records Systems Division, Immigration and Naturalization Service, room 5304, 425 I Street, NW., Washington, DC 20536. Please include INS Number 1435-91 on correspondence to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Stella Jarina, Senior Immigration Examiner, Immigration and Naturalization Service, room 7228, 425 I Street, NW., Washington, DC 20536, telephone: (202) 514-3946.

SUPPLEMENTARY INFORMATION: IMMACT represents the first major change in the naturalization process in nearly eighty-five years. It is intended to facilitate the acquisition of United States citizenship by establishing an administrative naturalization process under the exclusive authority of the Attorney General. IMMACT amends the Immigration and Nationality Act of 1952 (Act) to authorize the Attorney General to naturalize persons as citizens of the United States, to administer the oath of allegiance in public ceremonies, and to issue Certificates of Naturalization. The legislation requires the Immigration and Naturalization Service (INS) to establish specific procedures to implement an administrative naturalization process that conforms to the intent of the law, and achieves the efficiencies desired, while insuring that the integrity and solemnity of the naturalization experience are preserved for future generations.

IMMACT transfers the exclusive jurisdiction to naturalize aliens from its traditional locus in the Judicial Branch to the Executive Branch, subject to judicial review. Under Administrative Naturalization, INS will continue to receive applications for naturalization on a revised N-400 application form and will conduct examinations to determine statutory eligibility for citizenship as before. IMMACT now requires the INS officer who initially examines an applicant to make a formal determination to grant or deny the application within 120 days after the date of first examination. Applicants whose applications are subject to a denial for cause may avail themselves of an administrative review hearing by a second INS officer prior to the INS rendering a final denial determination. The final determination is subject to *de novo* judicial review in United States District Court. In addition, IMMACT permits an applicant for naturalization to seek appropriate relief in United States District Court if the INS officer conducting the initial examination fails to render a determination within 120 days of the initial examination.

IMMACT permits an eligible candidate for naturalization to elect to have the Oath of Allegiance and Renunciation administered in a public ceremony conducted by INS or in an appropriate Federal Court, State Court, or other court as designated in the statute. Upon INS approval of the application, the applicant will be notified to appear at the Oath Administration Ceremony of his or her choice. With the taking of the oath, the Attorney General authorizes the INS to issue a Certificate of Naturalization which reflects the date of the ceremony. The Administrative Naturalization legislative history suggests that the public ceremonies conducted by INS should be held in accordance with the Attorney General's Model Plan for such induction proceedings so that the proceedings are uniform and preserve the dignity and decorum of the occasion.

IMMACT specifically provides that no new petitions for naturalization may be filed under the judicial naturalization system after October 1, 1991. However, any petition pending with the courts as of that date will be addressed under the provisions of the prior statute, unless the applicant for naturalization requests the timely withdrawal of a petition to permit consideration of the underlying application under the administrative process. Although no petitions may be filed with the courts after October 1, 1991, those courts described in section 310(b) of the Act will be authorized to administer the oath of naturalization to applicants who choose a court ceremony as part of the naturalization process.

IMMACT reduces the jurisdictional residence prerequisite for the filing of an application for naturalization, for those applicants not otherwise exempt, from six months in a State to three months in a State or INS District. In addition, IMMACT permits an applicant to file an application three months in advance of meeting any applicable continuous residence requirements. The applicant may request, in writing, the transfer of a pending application from one INS office to another, subject to the concurrence of the Attorney General.

In order to achieve uniformity and to facilitate the acquisition of United

States citizenship for qualified aliens, the administrative naturalization regulations are drafted to incorporate, to the fullest extent practicable, those judicial precedents and INS interpretations that have been clearly established under the prior statute and that are still applicable to the Act as amended. The purpose of this effort is threefold: to create a logical and more concise approach to the issues of citizenship eligibility; to incorporate those definitions and accepted principles of substantive and procedural naturalization law that the INS will apply in making its determinations; and to achieve greater consistency in decision making by clarifying INS practices and procedures for the benefit of both the public and Service personnel.

While the introduction of Administrative Naturalization is historically significant because it departs from the traditional dual participation by INS and the courts in granting the benefits of citizenship, IMMACT does not significantly alter the substantive requirements for naturalization. Consequently, the regulations provide that applicants for naturalization will continue to submit a modified version of Form N-400 to the INS office having jurisdiction to receive such applications based upon the applicant's county of residence. See 8 CFR 100.4. Part 316 of the regulations lists all basic eligibility factors provided in the Act, including application jurisdiction, documentation, residence in the United States, absences that bear on eligibility, determinations of good moral character, competency, and attachment and favorable disposition to the Constitution and laws of the United States. The regulations also provide procedural guidance regarding the preservation of naturalization eligibility and related matters. Requirements pertaining to the naturalization of children are contained in part 322 of the regulations.

Part 319 of the regulations explains the prerequisites for naturalization of spouses of United States citizens, including those who reside abroad for extended periods under a variety of recognized circumstances, and who seek the benefits of expeditious naturalization. The regulation also addresses the naturalization eligibility of the surviving spouse of a United States citizen who dies while on active-duty service in the Armed Forces of the United States.

Parts 328 and 329 define the eligibility requirements for naturalization of persons who qualify by reason of honorable service in the Armed Forces of the United States. These parts incorporate certain INS interpretations that have general applicability to both categories of applicants. The regulations pertaining to the implementation of section 405 of IMMACT concerning the naturalization eligibility of certain natives of the Philippines based upon active military service during World War II may be found at 56 FR 11060 (March 15, 1991).

The most significant changes resulting from the passage of IMMACT arise from the authority now conferred upon the Attorney General to make final determinations on applications for naturalization. Under the Designated Examiner system, which dates back to reform provisions of the Naturalization Act of June 29, 1906, 34 Stat. 596, the Attorney General was limited to making recommendations about naturalization eligibility to the courts. With Administrative Naturalization, INS will continue to conduct examinations on applications for naturalization as it did under the prior system. The statute mandates that the INS examiner assigned to the initial examination of the applicant must make a decision to either grant or deny the application within a 120 day period from the date of that examination. As a result, an applicant for naturalization will not have the option, as under the prior statute, to be permitted to "non-file" in those circumstances of *prima facie* ineligibility. Each application must be decided on its merits as either a grant or denial within the statutorily mandated time frame.

Issues of literacy or knowledge of history and government will be determined at the time of initial examination, and an applicant will be afforded one continuance during the 120-day period for the purpose of preparing for retesting. The regulations provide for either uniform testing by INS or the taking of a standardized test of the applicant's knowledge of the history and form of government of the United States. The standardized test resembles the test that is authorized by INS under section 245A(B)(1)(D)(iii) of the Act for Legalization applicants and administered by entities authorized by INS. The regulations also provide for the acceptance of the standardized test conducted under section 245A(B)(1)(D)(iii) of the Act during the second phase of the legalization process.

The 120 day limitation will also apply to the scheduling of reexaminations for any other matters, as may be necessary to enable the examining officer to make a determination on the case. An applicant for naturalization will also be required to meet his or her burden of proof of eligibility during the same limited time period. The officer will be compelled to deny the application for the applicant's lack of prosecution, or where the applicant fails to establish eligibility for citizenship as required by the statute.

A decision by the examining officer to deny the application for naturalization must be communicated to the applicant in writing, specifying the reasons for the denial and advising the applicant of the right either to accept the decision as final or to file a written request for hearing. A hearing request must be filed within thirty days of the receipt of the denial notice, requesting review by a second immigration officer of equal or higher grade. Because the administrative review process contained in section 336 of the Act is separate and distinct from the initial examination procedures under section 335 of the Act, it is not subject to the 120 day rule. However, such administrative review will be conducted as expeditiously as possible and completed no later than 180 days from the receipt of the applicant's request for hearing. The officer to whom the case is assigned has the authority to affirm, reverse, or modify the determination made by the first examining officer and to render a final determination in the matter.

If the decision at the conclusion of the review process is to issue a final denial determination, the applicant for naturalization will have exhausted the administrative remedies provided by the statute, and may seek *de novo* judicial review in the United States District Court having jurisdiction over the applicant's residence. The statute provides that the applicant may also request a *de novo* hearing on the application in accordance with the rules of the court. Under such judicial review and hearing, if requested, the District Court may either determine the issue or issues of eligibility or remand the matter to INS with appropriate instructions. Similarly, section 336 of the Act also affords an applicant the right to seek judicial review in United States District Court where the examining officer has failed to render a decision within the 120 days allotted.

The Administrative Naturalization system provides that applicants whose applications for naturalization have been approved by INS may choose to have the Oath of Allegiance administered in a public ceremony conducted by INS or an oath ceremony in a court authorized in the statute. Section 337 of the Act provides that

ceremonies conducted by INS shall be public, conducted frequently and at regular intervals, and in keeping with the dignity of the occasion. In order to fulfill this responsibility, all INS offices are required to conduct oath administration ceremonies at least once a month, or more frequently if required to insure the prompt naturalization of approved applicants, and are obligated to follow the guidelines to be established in a Model Plan approved by the Attorney General. In those instances in which an applicant has elected to take the Oath in a court setting, it is the responsibility of the Clerk of Court to notify INS of the applicant's appearance, so that a Certificate of Naturalization may be issued by the Attorney General. The Court must also provide certified copies of orders issued by the Court that relate to the applicant, such as a legal change of name, or any other such relief as the Court may grant.

Upon taking the requisite Oath of Allegiance, all applicants will receive from INS a newly designed Certificate of Naturalization reflecting United States citizenship as having been vested on the date upon which the Oath was taken. Apart from those recordkeeping requirements relating to the functions and duties of the Clerk of Court in section 339 of the Act, the INS will maintain all declarations of intention, as provided for in part 334 of the regulations, and applications for naturalization as part of its permanent records.

Analysis of the Regulation

The following part-by-part analysis of the interim regulation is intended to identify new and amended material in each part. The discussion reflects pertinent changes in content and identifies amending language derived from the implementing provisions of the statute.

Part 310, Naturalization Authority, derives directly from the language of IMMACT, and establishes regulations defining the newly conferred naturalization jurisdiction of the Service as of October 1, 1991. No new petitions for naturalization may be filed under the Judicial Naturalization system of the prior statute on or after that date. The regulations permit the applicant to elect to have the oath of allegiance administered either by the INS or in a court administered oath ceremony. They also address the role of the United States District Court in the process of judicial review for naturalization applications that are not determined within 120 days of initial examination, and the *de novo* review of denial determinations made by INS. Part 310 reflects the statute's new definition of jurisdiction to file applications for naturalization, providing for three months' residence in a State or INS District where such residency requirements are applicable.

Part 312, Educational Requirements for Naturalization, is amended to reflect the new literacy exemption category of those applicants who are 55 years of age with 15 years lawful permanent resident status. This part also adopts a new standardized testing procedure to achieve uniformity and fairness. In addition to the necessary conforming language, the new part 312 incorporates prior interpretations to clarify eligibility issues.

Part 313, Membership In the Communist Party or Any Other Totalitarian Organizations; Subversives, is a new part based upon existing interpretations and expands the definition of "subversives" to include participants in sabotage and terrorism as described in part 212.

Part 315, Persons Ineligible To Citizenship: Exemption From Military Service, is a new part derived entirely from existing interpretations and identifies specifically those treaties upon which an applicant may rely.

Part 316, General Requirements For Naturalization, is a significant redrafting of this section which contains the basic elements of statutory eligibility for naturalization. With one exception, the new part 316 does not change essential requirements, but does codify the most recent judicial interpretations to serve as a clear and concise explanation of the substantive requirements upon which the INS will base its naturalization determinations. The exception covers the early filing provision of section 334(a) of the Act, and includes in the early filing period the three months required to establish residence in a jurisdiction, if needed to qualify for the early filing privilege. Part 316a.1 has been deleted in its entirety due to its obsolescence. Necessary conforming language changes have been effected throughout the part and § 316a.2 is now incorporated in § 316.21.

Part 319, Special Classes Of Persons Who May Be Naturalized: Spouses Of United States Citizens, has been rewritten to include the three months' residence required to establish jurisdiction in a State or district in the three year period if needed to satisfy the early filing provisions of section 334(a) of the Act. The section has also been revised to clarify the factors and circumstances of eligibility for expeditious naturalization by drawing definitions and standards directly from the statute and existing judicial interpretations.

Part 322, Special Classes of Persons Who May Be Naturalized: Children Of Citizen Parent, has been redrafted to clarify issues of eligibility and procedure by incorporating existing judicial interpretations to provide more precise definitions with respect to children who may qualify for naturalization and the circumstances justifying expeditious naturalization consistent with the comparable provisions of part 319.

Part 324, Special Classes Of Persons Who May Be Naturalized: Women Who Have Lost United States Citizenship By Marriage, has been rewritten to incorporate the essential language of the prior part 324 and to conform necessary references relevant to the application and oath administration process.

Part 325, Nationals But Not Citizens Of The United States; Residence Within Outlying Possessions, is a new part deemed necessary to clarify the statutory basis for naturalization and to provide guidance in procedural matters.

Part 327, Special Classes Of Persons Who May Be Naturalized: Persons Who Lost United States Citizenship Through Service In Armed Forces Of Foreign Country During World War II, incorporates existing interpretations to describe eligibility factors and procedures under the conforming amendments of the new statute.

Part 328, Special Classes Of Persons Who May Be Naturalized: Persons With Three Years Service In The Armed Forces Of The United States, defines eligibility and provides specific definitions drawn from relevant judicial interpretations applicable to matters such as jurisdiction to file applications and good moral character.

Part 329, Special Classes Of Persons Who May Be Naturalized: Naturalization Based Upon Active Duty Service In The United States Armed Forces During Specified Periods of Hostilities, specifically defines qualifying periods of honorable service and clarifies the statutory authority for ease of reading and to provide a single source of reference.

Part 330, Special Classes Of Persons Who May Be Naturalized: Seamen, is expanded from the language of the statute and existing judicial interpretations to address the matter of eligibility, jurisdiction for filing applications, and the authentication of documents to satisfy the honorable service and good moral character requirements of the Act.

Part 331, Alien Enemies; Naturalization Under Specified

Conditions And Procedures, is a new addition to the regulations, drawing both definitions and procedural guidance from present interpretations.

Part 332, Naturalization Administration, is the new title for the prior part 332, "Preliminary Investigation Of Applicants For Naturalization And Witnesses," which was superseded by IMMACT and the implementation of Administrative Naturalization. The new part modifies the structure of its predecessor by eliminating parts 332b, 332c and 332d and incorporating them into a single part 332.

Part 332a, Official Forms, has been eliminated, and those forms to be designated for the purpose of Administrative Naturalization and its implementation will be found in part 499, Nationality Forms. Part 332 is amended to remove references to procedures relating to investigations conducted preliminary to the filing of petitions for naturalization. However, the description of the proper scope and conduct of an investigation of applicants is preserved in part 335, as is the permissible use of the investigation record in making final determinations as to the eligibility of an applicant for naturalization under the new process.

Part 333, Photographs, is revised to change the language from petitioner to applicant, as in all other parts of this chapter. The regulation specifies the use of ADIT-type photographs in the naturalization process, in lieu of the traditional full frontal passport quality photographs. This change, which brings all INS photograph requirements into conformity, will permit deleting certain personal descriptive references on the Certificate of Naturalization, such as hair color, eye color, and complexion.

Part 334, Application For Naturalization, formerly "Petition for Naturalization," is completely rewritten to eliminate the concept of petitioning used under the preceding statute. The new part retitles the traditional N–400 as "Application for Naturalization," and addresses the procedural requirements now applicable. The revised part provides for the filing of the application and its authorized amendment and describes the process for filing a Declaration Of Intention, now issued by INS rather than by a Clerk of Court and maintained in INS's records.

Part 335, Examination On Application For Naturalization, is also retitled as a result of IMMACT, from its original designation as "Preliminary Examination On Petitions For Naturalization." In addition to eliminating all references to the Petition For Naturalization, the new part draws directly from the statute, which mandates INS to continue to examine applicants for naturalization as under the judicial system and to make final determinations on applications for naturalization, subject to judicial review. The contents of the part continue to reflect the issues and procedures that remain unchanged under the administrative naturalization authority.

Part 336, Hearings On Denials Of Applications For Naturalization, supersedes the predecessor part 336, "Proceedings Before Naturalization Court." IMMACT provides that an applicant for naturalization must be accorded an administrative review within INS of any proposed determination to deny naturalization after examination under part 335. The interim regulation reflects the statutory mandate that INS must serve a written notice of denial upon an applicant no later than 120 days after the initial examination. The notice shall afford the applicant a clear, concise statement of the reasons for the denial, and shall fully advise the applicant of the right to request a hearing on the decision of the examining officer with a second immigration officer. Upon filing a request for a hearing within 30 days after the receipt of the Notice of Denial, the applicant will be scheduled, within a reasonable period of time not to exceed 180 days, for an administrative review hearing before an immigration officer of equal or higher grade to that of the examining officer. A person whose application is denied after exhausting all administrative remedies provided in this part may seek *de novo* judicial review in the United States District Court having proper jurisdiction over his or her residence. Any petition for review must be filed in accordance with the Rules of Court requiring service of notice of action upon the Attorney General and that official of INS in charge of the Service District or Suboffice in which the Office of the Clerk of Court is located.

Part 337, Oath of Allegiance, is rewritten to conform to the statutory language providing the INS with the authority to administer the oath of allegiance in administrative ceremonies, while affording applicants for naturalization the option to elect having the oath administered in a court ceremony setting. The substance of the oath of allegiance remains unaltered and the effective date of naturalization is the date upon which the oath is administered.

Part 338, Certificate of Naturalization, is revised to provide for the administrative issuance of Certificates of Naturalization by INS under the authority of the Attorney General, with such documents reflecting the date of citizenship as the date upon which the oath of allegiance is administered. The regulation provides the mechanism for the execution, issuance, and delivery of certificates, as well as the manner of endorsement in case of name change and the correction of certificates subsequent to delivery by INS.

Part 339, Functions And Duties Of Clerks of Court Regarding Naturalization Proceedings, eliminates all references to petitions and naturalization hearings under the prior statute. The present statute requires the clerk of each court that administers oaths of allegiance to issue, to each person to whom such an oath is administered, a document evidencing that such an oath was administered and to forward to the Attorney General necessary verification of such oath administration. The clerk must also forward evidence of related matters within thirty days after the close of the month in which the oath was administered. In addition, the Clerk of Court will submit to INS a monthly report of all petitions for *de novo* review filed with the court. The report will contain the petitioner's name, alien registration number, date of filing of the petition for *de novo* review, a *de novo* hearing, if requested, and, once an order has been entered, the disposition made by the Court.

Part 340, Revocation Of Naturalization, retains the statutory basis for revocations of naturalization and attendant procedures. In addition, the regulation addresses the procedures to correct, reopen, alter, modify, or vacate an order naturalizing a person.

Part 343b, Special Certificate of Naturalization for Recognition by a Foreign State, is amended by a forms consolidation project which was undertaken concurrent with this regulation package. Form N–577 was deleted and Form N–565, Application for Replacement Certificates, was amended to include the provisions of part 343b.

Part 344, Fees Collected By Clerks of Court, is modified to permit the United States District Courts to collect fees related to any service performed by the courts concerning naturalization proceedings as authorized by statute.

This rule also amends the listing of forms contained in 8 CFR 299.5 and 499.1, and adds a fee to 8 CFR 103.7(b) for filing a notice of appeal.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial

number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553 (d)(3). Section 408(b) of IMMACT specifically authorizes the Attorney General to promulgate regulations on an interim final basis to implement, in a timely manner, changes made to the Administrative Naturalization provisions of the Act. Those changes, which remove naturalization authority from the courts and confer it upon the Attorney General, become effective on October 1, 1991. Unless this regulation is issued in interim final form, no administrative procedures will exist on October 1 for the processing and determination of naturalization applications. This situation would result in delay, since the Service could not act to schedule interviews for naturalization or otherwise to process applications until regulations became effective. Accordingly, publication of this rulemaking on an interim basis is necessary in order to ensure efficient operation of the naturalization process. The Service will accept comments after publication, and will make such adjustments to the regulations as are necessary to address valid concerns.

New information collection requirements contained in this regulation have been submitted to the Office of Management and Budget for review and approval under the provisions of the Paperwork Reduction Act. Control numbers for previously approved information collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

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

8 CFR Part 299

Citizenship and naturalization, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 310

Citizenship and naturalization, Courts.

8 CFR Part 312

Citizenship and naturalization, Education.

8 CFR Part 313

Citizenship and naturalization.

8 CFR Part 315

Armed forces, Citizenship and naturalization, Selective service system, Treaties.

8 CFR Part 316

Citizenship and naturalization, International organizations, Reporting and recordkeeping requirements.

8 CFR Part 316a

Citizenship and naturalization, Immigration and Nationality Act, Residence.

8 CFR Part 319

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 324

Citizenship and naturalization, Reporting and recordkeeping requirements, Women.

8 CFR Part 325

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 327

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements.

8 CFR Part 328

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements.

8 CFR Part 329

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements, Veterans.

8 CFR Part 330

Citizenship and naturalization, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 331

Aliens, Citizenship and naturalization.

8 CFR Part 332

Citizenship and naturalization, Education, Reporting and recordkeeping requirements.

8 CFR Part 332a

Citizenship and naturalization, Courts.

8 CFR Part 332b

Citizenship and naturalization, Education.

8 CFR Part 332c

Citizenship and naturalization.

8 CFR Part 332d

Authority delegations (Government agencies), Citizenship and naturalization.

8 CFR Part 333

Citizenship and naturalization.

8 CFR Part 334

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 334a

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 335

Administrative practice and procedure, Authority delegations (Government agencies), Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 335a

Citizenship and naturalization.

8 CFR Part 335c

Citizenship and naturalization.

8 CFR Part 336

Citizenship and naturalization, Courts, Hearing and appeal procedures, Reporting and recordkeeping requirements.

8 CFR Part 337

Citizenship and naturalization.

8 CFR Part 338

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 339

Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 340

Citizenship and naturalization, Law enforcement.

8 CFR Part 343b

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 344

Citizenship and naturalization, Courts.

8 CFR Part 499

Citizenship and naturalization.

Accordingly, title 8, chapter I, parts 103 and 299, and subchapter C of the Code of Federal Regulations is amended as follows:

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

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

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

2. Section 103.7 is amended by:

a. Removing, in paragraph (b)(1), forms N–402 and N–577; and

b. Adding, in proper numerical sequence to the list of forms in paragraph (b)(1), forms N–300 and N–336, and revising the references to forms N–400 and N–565 in that paragraph to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form N–300. For filing application for declaration of intention—$70.00

Form N–336. For filing request for hearing on a decision in naturalization proceedings under section 336 of the Act—$110.00

* * * * *

Form N–400. For filing application for naturalization—$90.00

* * * * *

Form N–565. For filing application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated or destroyed; for a certificate of citizenship in a changed name under section 343 (b) or (d) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—$50.00

* * * * *

c. Removing paragraph (b)(3).

PART 299—IMMIGRATION FORMS

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

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

4. Section 299.5 is amended by revising the reference to form N–400 to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
N–400	Application for Naturalization.	1115–0009
*	*	*

SUBCHAPTER C—NATIONALITY REGULATIONS

5. Part 310 is added to read as follows:

PART 310—NATURALIZATION AUTHORITY

Sec.
310.1 Administrative naturalization authority.
310.2 Jurisdiction to accept applications for naturalization.
310.3 Administration of the oath of allegiance.
310.4 Judicial naturalization authority and withdrawal of petitions.
310.5 Judicial review.

Authority: 8 U.S.C. 1103, 1421, 1443, 1447, 1448; 8 CFR 2.1.

§ 310.1 Administrative naturalization authority.

(a) *Attorney General.* Commencing October 1, 1991, section 310 of the Act confers the sole authority to naturalize persons as citizens of the United States upon the Attorney General.

(b) *Commissioner of the Immigration and Naturalization Service.* Pursuant to § 2.1 of this chapter, the Commissioner of the Immigration and Naturalization Service is authorized to perform such acts as are necessary and proper to implement the Attorney General's authority under the provisions of section 310 of the Act.

§ 310.2 Jurisdiction to accept applications for naturalization.

The Service shall accept an application for naturalization from an applicant who is subject to a continuous residence requirement under section 316(a) or 319(a) of the Act as much as three months before the date upon which the applicant would otherwise satisfy such continuous residence requirement in the State or Service district where residence is to be established for naturalization purposes. At the time of examination on the application, the applicant will be required to prove that he or she satisfies the residence requirements for the residence reflected in the application.

§ 310.3 Administration of the oath of allegiance.

An applicant for naturalization may elect, at the time of filing of, or at the examination on, the application, to have the oath of allegiance and renunciation under section 337(a) of the Act administered in a public ceremony conducted by the Service or by any court described in section 310(b) of the Act. The jurisdiction of all such courts specified to administer the oath of allegiance shall extend only to those persons who are resident within the respective jurisdictional limits of such courts, except as otherwise provided in section 316(f)(2) of the Act.

§ 310.4 Judicial naturalization authority and withdrawal of petitions.

(a) *Jurisdiction.* No court shall have jurisdiction under section 310(a) of the Act, to naturalize a person unless a petition for naturalization with respect to that person was filed with the naturalization court before October 1, 1991.

(b) *Withdrawal of petitions.* (1) In the case of any petition for naturalization which was pending in any court as of November 29, 1990, the petitioner may elect to withdraw such petition, and have the application for naturalization considered under the administrative naturalization process. Such petition must be withdrawn after October 1, 1991, but not later than December 31, 1991.

(2) Except as provided in paragraph (b)(1) of this section, the petitioner shall not be permitted to withdraw his or her petition for naturalization, unless the Attorney General consents to the withdrawal.

(c) *Judicial proceedings.* (1) All pending petitions not withdrawn in the manner and terms described in paragraph (b) of this section, shall be decided, on the merits, by the naturalization court, in conformity with the applicable provisions of the judicial naturalization authority of the prior statute. The reviewing court shall enter a final order.

(2) In cases where the petitioner fails to prosecute his or her petition, the court shall decide the petition upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.

§ 310.5 Judicial review.

(a) *After 120 days following examination.* An applicant for naturalization may seek judicial review of a pending application for naturalization in those instances where the Service fails to make a

determination under section 335 of the Act within 120 days after an examination is conducted under part 335 of this chapter. An applicant shall make a proper application for relief to the United States District Court having jurisdiction over the district in which the applicant resides. The court may either determine the issues brought before it on their merits, or remand the matter to the Service with appropriate instructions.

(b) *After denial of an application.* After an application for naturalization is denied following a hearing before a Service officer pursuant to section 336(a) of the Act, the applicant may seek judicial review of the decision pursuant to section 310 of the Act.

6. Part 312 is revised to read as follows:

PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

Sec.
312.1 Literacy requirements.
312.2 Knowledge of history and government of the United States.
312.3 Standardized citizenship testing.
312.4 Selection of interpreter.
312.5 Failure to meet educational and literacy requirements.

Authority: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

§ 312.1 Literacy requirements.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, no person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.

(b) *Exceptions.* The following persons need not demonstrate an ability to read, write and speak words in ordinary usage in the English language:

(1) A person who, on the date of filing of his or her application for naturalization, is over 50 years of age and has been living in the United States for periods totalling at least 20 years subsequent to a lawful admission for permanent residence;

(2) A person who, on the date of filing his or her application for naturalization, is over 55 years of age and has been living in the United States for periods totalling at least 15 years subsequent to a lawful admission for permanent residence; or

(3) A person who is physically unable to comply with the literacy requirements due to a permanent disability such as blindness or deafness. A person who has a general incapacity to learn either because of developmental disability or advanced age may not ordinarily be considered to be physically unable to comply with the literacy requirements.

(c) *Literacy examination.* (1) *Verbal Skills.* The ability of an applicant to speak English shall be determined by a designated examiner from the applicant's answers to questions normally asked in the course of the examination.

(2) *Reading and writing skills.* Except as noted in § 312.3, an applicant's ability to read and write English shall be tested using excerpts from one or more parts of the Service authorized Federal Textbooks on Citizenship written at the elementary literacy level, Service publications M–289 and M–291. These textbooks may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are available at certain public educational institutions. An applicant's writing sample shall be retained in the applicant's Service file.

§ 312.2 Knowledge of history and government of the United States.

(a) *General.* No person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. A person who is exempt from the literacy requirement under § 312.1(b) must still satisfy this requirement.

(b) *History and government examination*—(1) *Procedure.* The examination of an applicant's knowledge of the history and form of government of the United States shall be given by a designated examiner in the English language unless:

(i) The applicant is exempt from the English literacy requirement under § 312.1(b), in which case the examination may be conducted in the applicant's native language with the assistance of an interpreter selected in accordance with § 312.4 of this part, but only if the applicant's command of spoken English is insufficient to conduct a valid examination in English;

(ii) The applicant is required to satisfy and has satisfied the English literacy requirement under § 312.1(d), but the officer conducting the examination determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English. In such a case the examination may be conducted in the applicant's native language, with the assistance of an interpreter selected in accordance with § 312.4;

(iii) The applicant has met the requirements of § 312.3.

(2) *Scope and substance.* The scope of the examination shall be limited to subject matters covered in the Service authorized Federal Textbooks on Citizenship except for the identity of current officeholders. In choosing the subject matters, in phrasing questions and in evaluating responses, due consideration shall be given to the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of the applicant's knowledge and understanding.

§ 312.3 Standardized citizenship testing.

(a) An applicant for naturalization may satisfy the reading and writing requirements of § 312.1 and the knowledge requirements of § 312.2 by passing a standardized citizenship test given by an entity authorized by the Service to conduct such a test. An applicant who passes a standardized citizenship test within one (1) year of the date on which he or she submits an application for naturalization shall not be reexamined at the Service naturalization interview on his or her ability to read and write English or on his or her knowledge of the history and form of government of the United States, unless the Service believes that the applicant's test results were obtained through fraud or misrepresentation. The applicant must still demonstrate his or her ability to speak English in accordance with § 312.1(c)(1). An applicant who has failed a standardized citizenship test may continue to pursue the application with the Service, and will not be prejudiced by that failure during an examination conducted by the Service under §§ 312.1 and 312.2.

(b) An applicant who has obtained lawful permanent resident alien status pursuant to section 245A of the Act, and who, at that time demonstrated English language proficiency in reading and writing, and knowledge of the government and history of the United States through either an examination administered by the Service or a standardized section 312 test authorized by the Service for use with Legalization applicants as provided in section 245A(b)(1)(D)(iii) of the Act, will not be reexamined on those skills at the time of the naturalization interview. However, such applicant must still establish

eligibility for naturalization through testimony in the English language.

§ 312.4 Selection of interpreter.

An interpreter to be used under § 312.2 may be selected either by the applicant or by the Service. However, the Service reserves the right to disqualify an interpreter provided by the applicant in order to insure the integrity of the examination. Where the Service disqualifies an interpreter, the Service must provide another interpreter for the applicant.

§ 312.5 Failure to meet educational and literacy requirements.

(a) An applicant for naturalization who fails the English literacy or history and government test at the first examination will be afforded a second opportunity to pass the test(s) within 90 days after the first examination.

(b) If an applicant who receives notice of the second scheduled examination date fails to appear for that second examination without prior notification to the Service, the applicant will be deemed to have failed this second examination. Before an applicant may request a postponement of the second examination to a date that is more than 90 days after the initial examination, the applicant must agree in writing to waive the requirement under section 336 of the Act that the Service must render a determination on the application within 120 days from the initial interview, and instead to permit the Service to render a decision within 120 days from the second interview.

7. Part 313 is added to read as follows:

PART 313—MEMBERSHIP IN THE COMMUNIST PARTY OR ANY OTHER TOTALITARIAN ORGANIZATIONS; SUBVERSIVES

Sec.
313.1 Definitions.
313.2 Prohibitions.
313.3 Statutory exemptions.
313.4 Procedure.

Authority: 8 U.S.C. 1103, 1424, 1443.

§ 313.1 Definitions.

For purposes of this part:

Advocate includes, but is not limited to, advising, recommending, furthering by overt act, or admitting a belief in a doctrine, and may include the giving, lending, or promising of support or of money or any thing of value to be used for advocating such doctrine.

Advocating Communism means advocating the establishment of a totalitarian communist dictatorship, including the economic, international, and governmental doctrines of world communism, in all countries of the world through the medium of an internationally coordinated communist revolutionary movement.

Affiliation with an organization includes, but is not limited to, the giving, lending, or promising of support or of money or any thing of value, to that organization to be used for any purpose.

Circulate includes circulating, distributing, or displaying a work.

Communist Party includes:

(1) The Communist Party of the United States;

(2) The Communist Political Association;

(3) The Communist Party of any state of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state;

(4) Any section, subsidiary, branch, affiliate, or subdivision of any such association or party;

(5) The direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; and

(6) Any communist-action or communist-front organization that is registered or required to be registered under section 786 of title 50 of the United States Code, provided that the applicant knew or had reason to believe, while he or she was a member, that such organization was a communist-front organization.

Organization includes, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation, or fund, and any group of persons, whether incorporated or not, permanently or temporarily associated together for joint action on any subject or subjects.

Publication or *publishing* of a work includes writing or printing a work; permitting, authorizing, or consenting to the writing or printing of a work; and paying for the writing or printing of a work.

Subversive is any individual who advocates or teaches:

(1) Opposition to all organized government;

(2) The overthrow, by force or violence or other unconstitutional means, of the Government of the United States or of all forms of law;

(3) The duty, necessity, or propriety of the unlawful assaulting or killing, either individually or by position, of any officer or officers of the United States or of any other organized government, because of his, her, or their official character;

(4) The unlawful damage, injury, or destruction of property;

(5) Sabotage; or

(6) Terrorist activities or the engaging in terrorist activities, as defined in section 212(a)(3)(B) (ii) and (iii) of the Act.

Totalitarian dictatorship and *totalitarianism* refer to systems of government not representative in fact and characterized by:

(1) The existence of a single political party, organized on a dictatorial basis, with so close an identity between the policies of such party and the government policies of the country in which the party exists that the government and the party constitute an indistinguishable unit; and

(2) The forcible suppression of all opposition to such a party.

Totalitarian party includes:

(1) Any party in the United States which advocates totalitarianism;

(2) Any party in any State of the United States, in any foreign state, or in any political or geographical subdivision of any foreign state which advocates or practices totalitarianism;

(3) Any section, subsidiary, branch, affiliate, or subdivision of any such association or party; and

(4) The direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt.

§ 313.2 Prohibitions.

Except as provided in § 313.3, no applicant for naturalization shall be naturalized as a citizen of the United States if, within ten years immediately preceding the filing of an application for naturalization or after such filing but before taking the oath of citizenship, such applicant:

(a) Is or has been a member of or affiliated with the Communist Party or any other totalitarian party; or

(b) Is or has advocated communism or the establishment in the United States of a totalitarian dictatorship; or

(c) Is or has been a member of or affiliated with an organization that advocates communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterance or through any written or printed matter published by such organization; or

(d) Is or has been a subversive, or a member of, or affiliated with, a subversive organization; or

(e) Knowingly is publishing or has published any subversive written or printed matter, or written or printed matter advocating communism; or

(f) Knowingly circulates or has circulated, or knowingly possesses or has possessed for the purpose of

circulating, subversive written or printed matter, or written or printed matter advocating communism; or

(g) Is or has been a member of, or affiliated with, any organization that publishes or circulates, or that possesses for the purpose of publishing or circulating, any subversive written or printed matter, or any written or printed matter advocating communism.

§ 313.3 Statutory exemptions.

(a) *General.* An applicant shall bear the burden of establishing that classification in one of the categories listed under § 313.2 is not a bar to naturalization.

(b) *Exemptions.* Despite membership in or affiliation with an organization covered by § 313.2, an applicant may be naturalized if the applicant establishes that such membership or affiliation is or was:

(1) Involuntary:

(2) Without awareness of the nature or the aims of the organization, and was discontinued if the applicant became aware of the nature or aims of the organization;

(3) Terminated prior to the attainment of age sixteen by the applicant, or more than ten years prior to the filing of the application for naturalization;

(4) By operation of law; or

(5) Necessary for purposes of obtaining employment, food rations, or other essentials of living.

(c) *Awareness and participation*—(1) *Exemption applicable.* The exemption under paragraph (b)(2) of this section may be found to apply only to an applicant whose participation in the activities of an organization covered under § 313.2 was minimal in nature, and who establishes that he or she was unaware of the nature of the organization while a member of the organization.

(2) *Exemptions inapplicable.* The exemptions under paragraphs (b)(4) and (b)(5) of this section will not apply to any applicant who served as a functionary of an organization covered under § 313.2, or who was aware of and believed in the organization's doctrines.

(d) *Essentials of living*—(1) *Exemption applicable.* The exemption under paragraph (b)(5) of this section may be found to apply only to an applicant who can demonstrate:

(i) That membership in the covered organization was necessary to obtain the essentials of living like food, shelter, clothing, employment, and an education, which were routinely available to the rest of the population—for purposes of this exemption, higher education will qualify as an essential of living only if the applicant can establish the existence of special circumstances which convert the need for higher education into a need as basic as the need for food or employment: and,

(ii) That he or she participated only to the minimal extent necessary to receive the essential of living.

(2) *Exemption inapplicable.* The exemption under paragraph (b)(5) of this section will not be applicable to an applicant who became a member of an organization covered under 313.2 to receive certain benefits:

(i) Without compulsion from the governing body of the relevant country; or

(ii) Which did not qualify as essentials of living.

§ 313.4 Procedure.

In all cases in which the applicant claims membership or affiliation in any of the organizations covered by § 313.2, the applicant shall attach to the application a detailed written statement describing such membership or affiliation, including the periods of membership or affiliation, whether the applicant held any office in the organization, and whether membership or affiliation was voluntary or involuntary. If the applicant alleges that membership or affiliation was involuntary, or that one of the other exemptions in § 313.3 applies, the applicant's statement shall set forth the basis of that allegation.

8. Part 315 is added to read as follows:

PART 315—PERSONS INELIGIBLE TO CITIZENSHIP: EXEMPTION FROM MILITARY SERVICE

Sec.

315.1 Definitions.
315.2 Ineligibility and exceptions.
315.3 Evidence.
315.4 Exemption treaties.

Authority: 8 U.S.C. 1103, 1443.

§ 315.1 Definitions.

As used in this part:

Exemption from military service means either:

(1) A permanent exemption from induction into the Armed Forces or the National Security Training Corps of the United States for military training or military service; or

(2) The release or discharge from military training or military service in the Armed Forces or in the National Security Training Corps of the United States.

Induction means compulsory entrance into military service of the United States whether by conscription or, after being notified of a pending conscription, by enlistment.

Treaty national means an alien who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service.

§ 315.2 Ineligibility and exceptions.

(a) *Ineligibility.* Except as provided in paragraph (b) of this section, any alien who has requested, applied for, and obtained an exemption from military service on the ground that he or she is an alien shall be ineligible for approval of his or her application for naturalization as a citizen of the United States.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to an alien who establishes by clear and convincing evidence that:

(1) At the time that he or she requested an exemption from military service, the applicant had no liability for such service even in the absence of an exemption;

(2) The applicant did not request or apply for the exemption from military service, but such exemption was automatically granted by the United States government;

(3) The exemption from military service was based upon a ground other than the applicant's alienage;

(4) In claiming an exemption from military service, the applicant did not knowingly and intentionally waive his or her eligibility for naturalization because he or she was misled by advice from a competent United States government authority, or from a competent authority of the government of his or her country of nationality, of the consequences of applying for an exemption from military service and was, therefore, unable to make an intelligent choice between exemption and citizenship;

(5) The applicant applied for and received an exemption from military service on the basis of alienage, but was subsequently inducted into the Armed Forces, or the National Security Training Corps, of the United States; however, an applicant who voluntarily enlists in and serves in the Armed Forces of the United States, after applying for and receiving an exemption from military service on the basis of alienage, does not satisfy this exception to paragraph (a) of this section;

(6) Prior to requesting the exemption from military service:

(i) The applicant was a treaty national who had served in the armed forces of the country of which he or she was a national; however, a treaty national who did not serve in the armed forces of the country of nationality prior to requesting

the exemption from military service does not satisfy this exception to paragraph (a) of this section;

(ii) The applicant served a minimum of eighteen months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of the applicant's service; or

(iii) The applicant served a minimum of twelve months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of the applicant's service, provided that the applicant applied for registration with the Selective Service Administration after September 28, 1971; or

(7) The applicant is applying for naturalization pursuant to section 329 of the Act.

§ 315.3 Evidence.

(a) The records of the Selective Service System and the military department under which the alien served shall be conclusive evidence of whether the alien was relieved or discharged from liability for military service because he or she was an alien.

(b) The regulations of the Selective Service Administration and its predecessors will be controlling with respect to the requirement to register for, and liability for, service in the Armed Forces of the United States.

§ 315.4 Exemption treaties.

(a) The following countries currently have effective treaties providing reciprocal exemption of aliens from military service:

Argentina (Art. X, 10 Stat. 1005, 1009, effective 1853)
Austria (Art. VI, 47 Stat. 1876, 1880, effective 1928)
China (Art. XIV, 63 Stat. 1299, 1311, effective 1946)
Costa Rica (Art. IX, 10 Stat. 916, 921, effective 1851)
Estonia (Art. VI, 44 Stat. 2379, 2381, effective 1925)
Honduras (Art. VI, 45 Stat. 2618, 2622, effective 1927)
Ireland (Art. III, 1 US 785, 789, effective 1950)
Italy (Art. XIII, 63 Stat. 2255, 2272, effective 1948)
Latvia (Art. VI, 45 Stat. 2641, 2643, effective 1928)
Liberia (Art. VI, 54 Stat. 1739, 1742, effective 1938)
Norway (Art. VI, 47 Stat. 2135, 2139, effective 1928)
Paraguay (Art. XI, 12 Stat. 1091, 1096, effective 1859)
Spain (Art. V, 33 Stat. 2105, 2108, effective 1902)
Switzerland (Art. II, 11 Stat. 587, 589, effective 1850)
Yugoslavia (Serbia) (Art. IV, 22 Stat. 963, 964, effective 1881)

(b) The following countries previously had treaties providing for reciprocal exemption of aliens from military service:

El Salvador (Art. VI, 46 Stat. 2817, 2821, effective 1926 to February 8, 1958)
Germany (Art. VI, 44 Stat. 2132, 2136, effective 1923 to June 2, 1954)
Hungary (Art. VI, 44 Stat, 2441, 2445, effective 1925 to July 5, 1952)
Thailand (Siam) (Art. 1, 53 Stat. 1731, 1732, effective 1937 to June 8, 1968)

9. A new part 316 is added to read as follows:

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

Sec.
316.1 Definitions.
316.2 Eligibility.
316.3 Jurisdiction.
316.4 Application; documents.
316.5 Residence in the United States.
316.6–316.9 [Reserved].
316.10 Good moral character.
316.11 Attachment to the Constitution; favorable disposition toward the good order and happiness.
316.12 Applicant's legal incompetency during statutory period.
316.13 [Reserved].
316.14 Adjudication—examination, grant, denial.
316.15–316.19 [Reserved].
316.20 American institutions of research, public international organizations, and designations under the International Immunities Act.

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447, 8 CFR 2.1.

§ 316.1 Definitions.

As used in this part:

Application means the form specified in § 499.1 of this chapter on which an applicant requests consideration for naturalization.

Service district means the geographical area over which an office of the Immigration and Naturalization Service has jurisdiction, as defined in § 100.4 of this chapter.

§ 316.2 Eligibility.

(a) *General.* Except as otherwise provided in this chapter, to be eligible for naturalization, an alien must establish that he or she:

(1) Is at least 18 years of age;

(2) Has been lawfully admitted as a permanent resident of the United States;

(3) Has resided continuously within the United States, as defined under § 316.5, for a period of at least five years after having been lawfully admitted;

(4) Has been physically present in the United States for at least 30 months of the five years preceding the date of filing the application;

(5) Immediately preceding the filing of an application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act, has resided, as defined under § 316.5, for at least three months in a State or Service district having jurisdiction over the applicant's actual place of residence, and in which the alien seeks to file the application;

(6) Has resided continuously within the United States from the date of application for naturalization up to the time of admission to citizenship;

(7) For all relevant time periods under this paragraph, has been and continues to be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(8) Is not a person described in Section 314 of the Act relating to deserters of the United States Armed Forces or those persons who departed from the United States to evade military service in the United States Armed Forces.

(b) *Burden of proof.* The applicant shall bear the burden of establishing that he or she meets all of the requirements for naturalization, including that the applicant was lawfully admitted as a permanent resident to the United States, in accordance with the immigration laws in effect at the time of the applicant's initial entry or any subsequent reentry.

§ 316.3 Jurisdiction.

Except as provided in § 316.5, the applicant shall file an application for naturalization with the Service office having jurisdiction, as described in § 100.4 of this chapter, over the applicant's residence at the time of filing the application. The applicant may be required to submit evidence of residence for at least three months immediately preceding the filing of the application in the State or Service district in which the applicant files the application. For purposes of this section, the applicant's residence in a State where there are two or more districts will be sufficient to comply with the jurisdictional requirement of residence in any one of those districts.

§ 316.4 Application; documents.

(a) The applicant shall apply for naturalization by filing:

(1) Form N–400 (Application for Naturalization);

(2) Evidence of lawful permanent residence in the United States in the form of photocopies (front and back) of Forms I–551, or I–151 (Alien Registration Receipt Card), or any other entry document;

(3) Form FD–258 (Fingerprint Card); and

(4) Three (3) photographs as described in § 333.1 of this chapter.

(b) At the time of the examination on the application for naturalization, the applicant may be required to establish the status of lawful permanent resident by submitting the original evidence, issued by the Service, of lawful permanent residence in the United States. The applicant may be also required to submit any passports, or any other documents that have been used to enter the United States at any time after the original admission for permanent residence.

§ 316.5 Residence in the United States.

(a) *General.* Unless otherwise specified, for purposes of this chapter, including § 316.2 (a)(3), (a)(5), and (a)(6), an alien's residence is the same as that alien's domicile, or principal actual dwelling place, without regard to the alien's intent, and the duration of an alien's residence in a particular location is measured from the moment the alien first establishes residence in that location.

(b) *Residences in specific cases*—(1) *Military personnel.* For applicants who are serving in the Armed Forces of the United States but who do not qualify for naturalization under part 328 of this chapter, the applicant's residence shall be:

(i) The State or Service District where the applicant is physically present for at least three months, immediately preceding the filing of an application for naturalization, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act;

(ii) The location of the residence of the applicant's spouse and/or minor child(ren); or

(iii) The applicant's home of record as declared to the Armed Forces at the time of enlistment and as currently reflected in the applicant's military personnel file.

(2) *Students.* An applicant who is attending an educational institution in a State or Service District other than the applicant's home residence may apply for naturalization:

(i) Where that institution is located; or

(ii) In the State of the applicant's home residence if the applicant can establish that he or she is financially dependent upon his or her parents at the time that the application is filed and during the naturalization process.

(3) *Commuter aliens.* An applicant who is a commuter alien, as described in § 211.5 of this chapter, must establish a principal dwelling place in the United States with the intention of permanently residing there, and must thereafter acquire the requisite period of residence before eligibility for naturalization may be established. Accordingly, a commuter resident alien may not apply for naturalization until he or she has actually taken up permanent residence in the United States and until such residence has continued for the required statutory period. Such an applicant bears the burden of providing evidence to that effect.

(4) *Residence in multiple states.* If an applicant claims residence in more than one State, the residence for purposes of this part shall be determined by reference to the location from which the annual federal income tax returns have been and are being filed.

(5) *Residence during absences of less than one year.* (i) An applicant's residence during any absence of less than one year shall continue to be the State or Service district where the applicant last resided at the time of the applicant's departure abroad.

(ii) Return to the United States. If, upon returning to the United States, an applicant returns to the State or Service district where the applicant last resided, the applicant will have complied with the continuous residence requirement specified in § 316.2(a)(5) when at least three months have elapsed, including any part of the applicant's absence, from the date on which the applicant first established that residence. If the applicant establishes residence in a State or Service district other than the one in which he or she last resided, the applicant must complete three months at that new residence to be eligible for naturalization.

(c) *Loss of Residence Status*—(1) *Absence from the United States.* (i) *For continuous periods of between six months and one year.* Absences from the United States for continuous periods of between six months and one year during the periods for which continuous residence is required under § 316.2 (a)(3) and (a)(6) shall break the continuity of such residence, and shall lead to the conclusion that the applicant has abandoned lawful permanent residence in the United States for naturalization purposes, unless the applicant can establish otherwise to the satisfaction of the Service. This conclusion remains valid even if the applicant proves that he or she did not apply for or otherwise request a nonresident classification for tax purposes, that he or she did not document an abandonment of lawful permanent resident status, and that he or she is still considered a lawful permanent resident under immigration laws. The types of documentation which may establish that the applicant did not abandon his or her lawful permanent residence in the United States during an extended absence include, but are not limited to, evidence that during the absence:

(A) The applicant did not terminate his or her employment in the United States;

(B) The applicant's immediate family remained in the United States;

(C) The applicant retained full access to his or her United States abode; or

(D) The applicant did not obtain employment while abroad.

(ii) *For period in excess of one year.* Unless an applicant applies for benefits in accordance with paragraph (d) of this section, absences from the United States for a continuous period of one year or more during the period for which continuous residence is required under § 316.2 (a)(3) and (a)(5) shall break the continuity of the applicant's residence. An applicant described in this paragraph who must satisfy a five-year statutory residence period may file an application for naturalization four years and one day following the date of the applicant's return to the United States to resume permanent residence. An applicant described in this paragraph who must satisfy a three-year statutory residence period may file an application for naturalization two years and one day following the date of the applicant's return to the United States to resume permanent residence.

(2) *Claim of nonresident alien status for income tax purposes after lawful admission as a permanent resident.* An applicant who is a lawfully admitted permanent resident of the United States, but who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, raises a rebuttable presumption that the applicant has relinquished the privileges of permanent resident status in the United States.

(3) *Deportation and return.* Any departure from the United States while under an order of deportation terminates the applicant's status as a lawful permanent resident and, therefore, breaks the continuity of residence for purposes of this part.

(4) *Readmission after a deferred inspection or exclusion proceeding.* An applicant who has been readmitted as a lawful permanent resident after a deferred inspection or by the immigration judge during exclusion proceedings shall satisfy the residence and physical presence requirements under § 316.2 (a)(3), (a)(4), (a)(5), and (a)(6) in the same manner as any other applicant for naturalization.

§§ 316.6-316.9 [Reserved]

§ 316.10 Good moral character.

(a) *Requirement of good moral character during the statutory period.* (1) An applicant for naturalization bears the burden of demonstrating that, during the statutorily prescribed period, he or she has been and continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance.

(2) In accordance with section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case-by-case basis taking into account the elements enumerated in this section and the standards of the average citizen in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.

(b) *Finding of a lack of good moral character.* (1) An applicant shall be found to lack good moral character, if the applicant has been:

(i) Convicted of murder; or

(ii) Convicted of an aggravated felony as defined in section 101(a)(43) of the Act.

(2) An applicant shall be found to lack good moral character if during the statutory period the applicant:

(i) Committed one or more crimes involving moral turpitude, other than a purely political offense, for which the applicant was convicted, except as specified in section 212(a)(2)(ii)(II) of the Act;

(ii) Committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was five years or more, provided that, if the offense was committed outside the United States, it was not a purely political offense;

(iii) Violated any law of the United States, any State, or any foreign country relating to a controlled substance, provided that the violation was not a single offense for simple possession of 30 grams or less of marijuana;

(iv) Admits committing any criminal act covered by paragraphs (b)(2) (i), (ii), or (iii) of this section for which there was never a formal charge, indictment, arrest, or conviction, whether committed in the United States or any other country;

(v) Is or was confined to a penal institution for an aggregate of 180 days pursuant to a conviction or convictions (provided that such confinement was not outside the United States due to a conviction outside the United States for a purely political offense);

(vi) Has given false testimony to obtain any benefit from the Act, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit; this prohibition applies regardless of whether the information provided in the false testimony was material, in the sense that if given truthfully it would have rendered ineligible for benefits either the applicant or the person on whose behalf the applicant sought the benefit;

(vii) Is or was involved in prostitution or commercialized vice as described in section 212(a)(2)(D) of the Act;

(viii) Is or was involved in the smuggling of a person or persons into the United States as described in section 212(a)(6)(E) of the Act;

(ix) Has practiced or is practicing polygamy;

(x) Committed two or more gambling offenses for which the applicant was convicted;

(xi) Earns his or her income principally from illegal gambling activities; or

(xii) Is or was a habitual drunkard.

(3) Unless the applicant establishes extenuating circumstances, the applicant shall be found to lack good moral character if, during the statutory period, the applicant:

(i) Willfully failed or refused to support dependents;

(ii) Had an extramarital affair which tended to destroy an existing marriage; or

(iii) Committed unlawful acts that adversely reflect upon the applicant's moral character, or was convicted or imprisoned for such acts, although the acts do not fall within the purview of § 316.10(b) (1) or (2).

(c) *Proof of good moral character in certain cases*—(1) *Effect of probation or parole.* An applicant who has been on probation, parole, or suspended sentence during all or part of the statutory period is not thereby precluded from establishing good moral character, but such probation, parole, or suspended sentence may be considered by the Service in determining good moral character. An application will not be approved until after the probation, parole, or suspended sentence has been completed.

(2) *Full and unconditional executive pardon*—(i) *Before the statutory period.* An applicant who has received a full and unconditional executive pardon prior to the beginning of the statutory period is not precluded by § 316.10(b)(1) from establishing good moral character provided the applicant demonstrates that reformation and rehabilitation occurred prior to the beginning of the statutory period.

(ii) *During the statutory period.* An applicant who receives a full and unconditional executive pardon during the statutory period is not precluded by § 316.10(b)(2) (i) and (ii) from establishing good moral character, provided the applicant can demonstrate that extenuating and/or exonerating circumstances exist that would establish his or her good moral character.

(3) *Record expungement*—(i) *Drug offenses.* Where an applicant has had his or her record expunged relating to one of the narcotics offenses under section 212(a)(2)(A)(i)(II) and section 241(a)(2)(B) of the Act, that applicant shall be considered as having been "convicted" within the meaning of § 316.10(b)(2)(ii), or, if confined, as having been confined as a result of "conviction" for purposes of § 316.10(b)(2)(iv).

(ii) *Moral turpitude.* An applicant who has committed or admits the commission of two or more crimes involving moral turpitude during the statutory period is precluded from establishing good moral character, even though the conviction record of one such offense has been expunged.

§ 316.11 Attachment to the Constitution; favorable disposition towards the good order and happiness.

(a) *General.* An applicant for naturalization must establish that during the statutorily prescribed period, he or she has been and continues to be attached to the principles of the Constitution of the United States and favorably disposed toward the good order and happiness of the United States. Attachment implies a depth of conviction which would lead to active support of the Constitution. Attachment and favorable disposition relate to

mental attitude, and contemplate the exclusion from citizenship of applicants who are hostile to the basic form of government of the United States, or who disbelieve in the principles of the Constitution.

(b) *Advocacy of peaceful change.* At a minimum, the applicant shall satisfy the general standard of paragraph (a) of this section by demonstrating an acceptance of the democratic, representational process established by the Constitution, a willingness to obey the laws which may result from that process, and an understanding of the means for change which are prescribed by the Constitution. The right to work for political change shall be consistent with the standards in paragraph (a) of this section only if the changes advocated would not abrogate the current Government and establish an entirely different form of government.

(c) *Membership in the Communist Party or any other totalitarian organization.* An applicant who is or has been a member of or affiliated with the Communist Party or any other totalitarian organization shall be ineligible for naturalization, unless the applicant's membership meets the exceptions in sections 313 and 335 of the Act and § 313.4 of this chapter.

§ 316.12 Applicant's legal incompetency during statutory period.

(a) *General.* An applicant who is legally competent at the time of the examination on the naturalization application and of the administration of the oath of allegiance may be admitted to citizenship, provided that the applicant fully understands the purpose and responsibilities of the naturalization procedures.

(b) *Legal incompetence.* Naturalization is not precluded if, during part of the statutory period, the applicant was legally incompetent or confined to a mental institution.

(1) There is a presumption that the applicant's good moral character, attachment, and favorable disposition which existed prior to the period of legal incompetency continued through that period. The Service may, however, consider an applicant's actions during a period of legal incompetence, as evidence tending to rebut this presumption.

(2) If the applicant has been declared legally incompetent, the applicant has the burden of establishing that legal competency has been restored. The applicant shall submit legal and medical evidence to determine and establish the claim of legal competency.

(3) The applicant shall bear the burden of establishing that any crimes committed, regardless of whether the applicant was convicted, occurred while the applicant was declared legally incompetent.

§ 316.13 [Reserved]

§ 316.14 Adjudication—examination, grant, denial.

(a) *Examination.* The examination on an application for naturalization shall be conducted in accordance with Section 335 of the Act.

(b) *Determination*—(1) *Grant or denial.* Subject to supervisory review, the employee of the Service who conducts the examination under paragraph (a) of this section shall determine whether to grant or deny the application, and shall provide reasons for the determination, as required under section 335(d) of the Act.

(2) *Appeal.* An applicant whose application for naturalization has been denied may request a hearing, which shall be carried out in accordance with section 336 of the Act.

§§ 316.15–316.19 [Reserved].

§ 316a.21 [Redesignated as § 316.5(d)].

10. Section 316a.21 is redesignated as paragraph (d) of § 316.5 and newly redesignated paragraph (d) is revised to read as follows:

§ 316.5 Residence in the United States.

* * * * *

(d) *Application for benefits with respect to absences; appeal*—(1) *Preservation of residence under section 316(b) of the Act.*

(i) An application for the residence benefits under section 316(b) of the Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N–470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year.

(ii) An approval of Form N–470 under section 316(b) of the Act shall cover the spouse and dependent unmarried sons and daughters of the applicant who are residing abroad as members of the applicant's household during the period covered by the application. The notice of approval, Form N–472, shall identify the family members so covered.

(iii) An applicant whose Form N–470 application under section 316(b) of the Act has been approved, but who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, raises a rebuttable presumption that the applicant has relinquished a claim of having retained lawful permanent resident status while abroad. The applicant's family members who were covered under section 316(b) of the Act and who were listed on the applicant's Form N–472 will also be subject to the rebuttable presumption that they have relinquished their claims to lawful permanent resident status.

(2) *Preservation of residence under section 317 of the Act.* An application for the residence and physical presence benefits of section 317 of the Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N–470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's absence from the United States or the performance of the functions or services described in section 317 of the Act.

(3) *Approval, denial, and appeal.* The applicant under paragraphs (d)(1) or (d)(2) of this section shall be notified of the Service's disposition of the application on Form N–472. If the application is denied, the Service shall specify the reasons for the denial, and shall inform the applicant of the right to appeal in accordance with the provisions of part 103 of this chapter.

§§ 316a.2, 316a.3, and 316a.4 [Redesignated as § 316.20 (a), (b), and (c)].

11. The texts of §§ 316a.2, 316a.3, and 316a.4, are redesignated as paragraphs (a), (b), and (c) of new § 316.20, and new paragraph headings are added to read as follows:

§§ 316.20 American institutions of research, public international organizations, and designations under the International Immunities Act.

(a) *American institutions of research.* * * *

(b) *Public international organizations of which the United States is a member by treaty or statute.* * * *

(c) *International Organizations Immunities Act designations.* * * *

PART 316a—[REMOVED]

12. Part 316a is removed.

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

13. The authority citation for part 319 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1430, 1443.

14. Section 319.1 is revised to read as follows:

§ 319.1 Persons living in marital union with United States citizen spouse.

(a) *Eligibility.* To be eligible for naturalization under section 319(a) of the Act, the spouse of a United States citizen must establish that he or she:

(1) Has been lawfully admitted for permanent residence to the United States;

(2) Has resided continuously within the United States, as defined under § 316.5 of this chapter, for a period of at least three years after having been lawfully admitted for permanent residence;

(3) Has been living in marital union with the citizen spouse for the three years preceding the date of examination on the application, and the spouse has been a United States citizen for the duration of that three year period;

(4) Has been physically present in the United States for periods totaling at least 18 months;

(5) Has resided, as defined in § 316.5 of this chapter, for at least 3 months immediately preceding the filing of the application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act, in the State or Service district having jurisdiction over the alien's actual place of residence and in which the alien has filed the application;

(6) Has resided continuously within the United States from the date of application for naturalization until the time of admission to citizenship;

(7) For all relevant periods under this paragraph, has been and continues to be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(8) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in § 316.2 (a)(3) through (a)(5) of this chapter.

(b) *Marital union*—(1) *General.* An applicant lives in marital union with a citizen spouse if the applicant actually resides with his or her current spouse. The burden is on the applicant to establish, in each individual case, that a particular marital union satisfies the requirements of this part.

(2) *Loss of Marital Union*—(i) *Divorce, death or expatriation.* A person is ineligible for naturalization as the spouse of a United States citizen under Section 319(a) of the Act if, before or after the filing of the application, the marital union ceases to exist due to death or divorce, or the citizen spouse has expatriated. Eligibility is not restored to an applicant whose relationship to the citizen spouse terminates before the applicant's admission to citizenship, even though the applicant subsequently marries another United States citizen.

(ii) *Separation*—(A) *Legal separation.* Any legal separation will break the continuity of the marital union required for purposes of this part.

(B) *Informal separation.* Any informal separation that suggests the possibility of marital disunity will be evaluated on a case-by-case basis to determine whether it is sufficient enough to signify the dissolution of the marital union.

(C) *Involuntary separation.* In the event that the applicant and spouse live apart because of circumstances beyond their control, such as military service in the Armed Forces of the United States or essential business or occupational demands, rather than because of voluntary legal or informal separation, the resulting separation, even if prolonged, will not preclude naturalization under this part.

(c) *Physical presence in the United States.* In the event that the alien spouse has never been in the United States, eligibility under this section is not established even though the alien spouse resided abroad in marital union with the citizen spouse during the three year period.

15. Section 319.2 is revised to read as follows:

§ 319.2 Person whose United States citizen spouse is employed abroad.

(a) *Eligibility.* To be eligible for naturalization under section 319(b) of the Act, the alien spouse of a United States citizen must:

(1) Establish that his or her citizen spouse satisfies the requirements under section 319(b)(1) of the Act, including that he or she is regularly stationed abroad. For purposes of this section, a citizen spouse is regularly stationed abroad if he or she proceeds abroad, for a period of not less than one year, pursuant to an employment contract or orders, and assumes the duties of employment;

(2) At the time of examination on the application for naturalization, be present in the United States pursuant to a lawful admission for permanent residence;

(3) At the time of naturalization, be present in the United States;

(4) Declare in good faith, upon naturalization before the Service, an intention:

(i) To reside abroad with the citizen spouse; and

(ii) To take up residence within the United States immediately upon the termination of the citizen spouse's employment abroad;

(5) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(6) Comply with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in § 316.2(a)(3) through (a)(6) of this chapter.

(b) *Alien spouse's requirement to depart abroad immediately after naturalization.* An alien spouse seeking naturalization under section 319(b) of the Act must:

(1) Establish that he or she will depart to join the citizen spouse within 30 to 45 days after the date of naturalization;

(2) Notify the Service immediately of any delay or cancellation of the citizen spouse's assignment abroad; and

(3) Notify the Service immediately if he or she is unable to reside with the citizen spouse because the citizen spouse is employed abroad in an area of hostilities where dependents may not reside.

(c) *Loss of marital union due to death, divorce, or expatriation of the citizen spouse.* A person is ineligible for naturalization as the spouse of a United States citizen under section 319(b) of the Act if, before or after the filing of the application, the marital union ceases to exist due to death or divorce, or the citizen spouse has expatriated. Eligibility is not restored to an applicant whose relationship to the citizen spouse terminates before the applicant's admission into citizenship, even though the applicant subsequently marries another United States citizen.

16. Section 319.3 is revised to read as follows:

§ 319.3 Surviving spouses of United States citizens who died during a period of honorable service in an active duty status in the Armed Forces of the United States.

(a) *Eligibility.* To be eligible for naturalization under section 319(d) of the Act, the surviving spouse of a United States citizen must:

(1) Establish that his or her citizen spouse died during a period of honorable service in an active duty

status in the Armed Forces of the United States;

(2) Establish that he or she was living in marital union with the citizen spouse, in accordance with § 319.1(b), at the time of that spouse's death;

(3) At the time of examination on the application for naturalization, reside in the United States pursuant to a lawful admission for permanent residence;

(4) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(5) Comply with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in § 316.2(a)(3) through (a)(6) of this chapter.

(b) *Remarriage of the surviving spouse.* The surviving spouse of a United States citizen described under paragraph (a)(1) of this section remains eligible for naturalization under section 319(d) of the Act, even if the surviving spouse remarries.

§§ 319.4 and 319.5 [Redesignated as §§ 319.5 and 319.6]

17. Sections 319.4 and 319.5 are redesignated as §§ 319.5 and 319.6 respectively.

§ 319.5 [Amended]

18. Newly resedignated § 319.5 is amended by revising, in the second sentence, the reference to "§ 316a.4" to read "§ 316.20(b)".

19. A new section 319.4 is added to read as follows:

§ 319.4 Persons continuously employed for 5 years by United States organizations engaged in disseminating information.

To be eligible for naturalization under section 319(c) of the Act, an applicant must:

(a) Establish that he or she is employed as required under section 319(c)(1) of the Act;

(b) Reside in the United States pursuant to a lawful admission for permanent residence;

(c) Establish that he or she has been employed as required under paragraph (a) of this section continuously for a period of not less than five years after a lawful admission for permanent residence;

(d) File his or her application for naturalization while employed as required under paragraph (a) of this section, or within six months following the termination of such employment;

(e) Be present in the United States at the time of naturalization;

(f) Declare in good faith, upon naturalization before the Service, an intention to take up residence within the United States immediately upon his or her termination of employment;

(g) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(h) Comply with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in § 316.2(a)(3) through (a)(6) of this chapter.

§§ 319.7-319.10 [Reserved]

20. Sections 319.7 through 319.10 are reserved.

21. Section 319.11 is revised to read as follows:

§ 319.11 Filing of application.

(a) *General.* An applicant covered by this part shall submit to the Service an application for naturalization on Form N-400, with the required fee, in accordance with the instructions contained therein. An alien spouse applying for naturalization under section 319(b) of the Act and § 319.2 shall also submit a statement of intent containing the following information about the citizen spouse's employment and the applicant's intent following naturalization:

(1) The name of the employer and:

(i) The nature of the employer's business; or

(ii) The ministerial, religious, or missionary activity in which the employer is engaged;

(2) Whether the employing entity is owned in whole or in part by United States interests;

(3) Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;

(4) The nature of the activity in which the citizen spouse is engaged;

(5) The anticipated period of employment abroad;

(6) Whether the alien spouse intends to reside abroad with the citizen spouse; and,

(7) Whether the alien spouse intends to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse.

(b) *Applications by military spouses*—(1) *General.* The alien spouses of United States military personnel being assigned abroad must satisfy the basic requirements of section 319(b) of the Act and of paragraph (a) of this section.

(2) *Government expense.* In the event that transportation expenses abroad for the alien spouse are to be paid by military authorities, a properly executed Certificate of Overseas Assignment to Support Application to File Petition for Naturalization, DD Form 1278 will be submitted in lieu of the statement of intent required by paragraph (a) of this section. Any DD Form 1278 issued more than 90 days in advance of departure is unacceptable for purposes of this section.

(3) *Private expense.* In the event that the alien spouse is not authorized to travel abroad at military expense, the alien spouse must submit in lieu of the statement of intent required by paragraph (a) of this section:

(i) A copy of the citizen spouse's military travel orders,

(ii) A letter from the citizen spouse's commanding officer indicating that the military has no objection to the applicant traveling to and residing in the vicinity of the citizen spouse's new duty station; and

(iii) Evidence of transportation arrangements to the new duty station.

22. Part 322 is revised to read as follows:

PART 322—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: CHILDREN OF CITIZEN PARENT

Sec.
322.1 [Reserved]
322.2 Eligibility.
322.3 Jurisdiction for filing application.
322.4 Application and examination on the application.
322.5 Oath of Alegiance.

Authority: 8 U.S.C. 1103, 1433, 1443, 1448.

§ 322.1 [Reserved]

§ 322.2 Eligibility.

(a) *General.* To be eligible for naturalization under section 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

(1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship;

(2) Reside permanently in the United States, in the physical and legal custody of the applying citizen parent, pursuant to a lawful admission for permanent residence;

(3) Be a person of good moral character, attached to the principles of

the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; a child under the age of fourteen will generally be presumed to satisfy this requirement;

(4) Comply with all other requirements for naturalization as provided in the Act and in part 316 of this chapter, including the disqualifications contained in sections 313, 314, 315, and 318 of the Act, except:

(i) The child is not required to satisfy the residence requirements under § 316.2(a)(3), (a)(4), or (a)(6) of this chapter; and,

(ii) The child is exempt from the literacy and knowledge requirements under section 312 of the Act.

(b) *Definition of Child.* For purposes of this part,

(1) *The definition of child includes:*

(i) A legitimate child;

(ii) A child who is legitimated before the child reaches age 16 under the laws of the child's residence or domicile, or under the laws of the father's residence or domicile, whether inside or outside of the United States, if such legitimation takes place while the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(iii) An illegitimate child if the application is being submitted by the child's natural mother; or

(iv) A child who is adopted before the child reaches age 16 if such adoption takes place while the child is in the legal custody of the adopting parent or parents at the time of such adoption.

(2) *The definition of child does not include:*

(i) A stepchild; or

(ii) An illegitimate child, except as provided in paragraph (b)(1)(iii) of this section, even if the child is recognized but not legitimated by the father.

(c) *Adopted children of a parent who meets the criteria of section 319(b)(1) of the Act.* An adopted child who is in the United States at the time of naturalization is also exempt from the residence requirements of § 316.2(a)(5) of this chapter if the child's adoptive citizen parent:

(1) Meets the criteria of section 319(b)(1) of the Act;

(2) Applies for naturalization of the child under section 322(c) of the Act; and

(3) Declares before the Service an intention in good faith to take up residence within the United States immediately upon termination of employment described in section 319(b)(1)(B) of the Act.

§ 322.3 Jurisdiction for filing application.

(a) The application for naturalization under section 322(a) of the Act must be filed with the office of the Service having jurisdiction over the place of residence of the child and the child's citizen parent.

(b) An application for naturalization under section 322(c) of the Act and § 322.2(c) may be filed in any office of the Service without regard to residence.

§ 322.4 Application and examination on the application.

(a) An application for naturalization under this section in behalf of a child shall be submitted on Form N–400 by the citizen parent. If the child is over the age of fourteen, Form FD–258, fingerprint card, must accompany the application.

(b) The application must be accompanied by proof of:

(1) The child's admission for lawful permanent residence;

(2) The applying citizen parent's United States citizenship; and

(3) The relationship between the child and applying citizen parent.

(c) In the case of an applicant under section 322(c) of the Act, the citizen parent shall also submit a statement of intent containing the following information about the citizen parent's employment and the child's intentions following naturalization:

(1) The name of the employer and either the nature of the employer's business, or the ministerial, religious, or missionary activity in which the employer is engaged;

(2) Whether the employing entity is owned in whole or in part by United States interests;

(3) Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;

(4) The nature of the activity in which the citizen parent is engaged;

(5) The anticipated period of employment abroad;

(6) The child's intention to reside abroad with the citizen parent: and

(7) Whether the citizen parent intends to take up residence within the United States immediately upon the termination of such employment abroad of the citizen parent.

(d) In the case of a citizen parent whose employment abroad is in connection with his or her membership in the Armed Forces of the United States, a properly executed DD Form 1278 will satisfy the requirements of paragraph (c) of this section.

(e) The child and the citizen parent must both appear at the examination on the application.

§ 322.5 Oath of Allegiance.

(a) A child, as defined in § 322.2(b), must take the oath of allegiance in compliance with part 337 of this chapter, if the child is capable of understanding the meaning of the oath.

(b) If the child is not exempt from the requirement to take the oath of allegiance, the citizen parent must be present at the oath taking ceremony, unless such parent has been excused for good cause.

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

23. The title of part 324 is revised as set forth above.

24. The authority citation for part 324 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

25. A new section 324.1 is added to read as follows:

§ 324.1 Definitions.

As used in this part:

Oath means the Oath of Allegiance as prescribed in section 337 of the Act.

§§ 324.11, 324.12, 324.13, and 324.14 [Redesignated as §§ 321.2, 324.3, 324.4 and 324.5]

26. Sections 324.11, 324.12, 324.13, and 324.14 are redesignated as §§ 324.2, 324.3, 324.4, and 324.5, respectively.

27. Newly redesignated §§ 324.2 and 324.3 are revised to read as follows:

§ 324.2 Former citizen at birth or by naturalization.

(a) *Eligibility.* To be eligible for naturalization under section 324(a) of the Act, an applicant must establish that she:

(1) Was formerly a United States citizen;

(2) Lost or may have lost United States citizenship:

(i) Prior to September 22, 1922, by marriage to an alien, or by the loss of United States citizenship of the applicant's spouse; or

(ii) On or after September 22, 1922, by marriage before March 3, 1931 to an alien ineligible to citizenship;

(3) Did not acquire any other nationality by affirmative act other than by marriage;

(4) Either:

(i) Has resided in the United States continuously since the date of the marriage referred to in paragraph (a)(2) of this section; or

(ii) Has been lawfully admitted for permanent residence prior to filing an application for naturalization;

(5) Has been and is a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States, for the period of not less than five years immediately preceding the examination on the application for naturalization up to the time of admission to citizenship; and

(6) Complies with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(i) The applicant is not required to satisfy the residence requirements under § 316.2(a)(3) through (a)(6) of this chapter; and,

(ii) The applicant need not set forth an intention to reside permanently within the United States.

(b) *Application.* An applicant for naturalization under this section must submit an application on Form N–400, as required by § 316.4 of this chapter. The application must be accompanied by a statement describing the applicant's eligibility as provided in paragraph (a) of this section as well as any available documentation to establish those facts. An application under this section shall be filed with the Service office having jurisdiction over the place of residence of the applicant.

§ 324.3 Women, citizens of the United States at birth, who lost or are believed to have lost citizenship by marriage and whose marriage has terminated.

(a) *Eligibility.* To be eligible for naturalization under section 324(c) of the Act, an applicant must establish:

(1) That she was formerly a United States citizen by birth;

(2) That she lost or may have lost her United States citizenship:

(i) Prior to September 22, 1922, by marriage to an alien; or

(ii) On or after September 22, 1922, by marriage to an alien ineligible to citizenship before March 3, 1931;

(3) That the marriage specified in paragraph (a)(2) of this section terminated subsequent to January 12, 1941;

(4) That she did not acquire any other nationality by affirmative act other than by marriage; and

(5) That she is not proscribed from naturalization under section 313 of the Act.

(b) *Procedures*—(1) *Application.* An applicant eligible for naturalization pursuant to paragraph (a) of this section, who desires to regain citizenship pursuant to section 324(c) of the Act, shall submit, without fee, an Application for Naturalization, form N–400, to the office of the Service having jurisdiction over her place of residence as evidence of her desire to take the oath.

(2) *Oath of Allegiance.* The district director shall review the applicant's submission, and shall inform the applicant of her eligibility under section 324(c) of the Act to take the oath in conformity with part 337 of this chapter. After the applicant has taken the oath, the applicant will be furnished with a copy of the oath by the clerk of the Court or the Service, as appropriate, properly certified, for which a fee not exceeding $5 may be charged. The oath may also be taken abroad before any diplomatic or consular officer of the United States, in accordance with such regulations as may be prescribed by the Secretary of State.

§ 324.4 [Amended]

28. Newly redesignated § 324.4 is amended by:

a. Removing, in the first sentence, the phrase, "of allegiance prescribed by part 337",

b. Revising, at the end of the first sentence, the phrase "on or after December 24, 1952" to read "or office of the Service within the United States";

c. Revising, in the second sentence, the reference to "§ 324.12" to read "§ 324.4(b) and (c)";

d. Revising, in the second sentence, the phrase "demands the triplicate copy of the Form N–408" to read "requests a copy of the oath".

§ 324.5 [Amended]

29. Newly redesignated § 324.5 is amended by:

a. Removing, in the first sentence, the phrase "prescribed in section 337 of the Immigration and Nationality Act";

b. Adding, in the first sentence, the phrase "or office of the Service within the United States" immediately following the phrase "before any naturalization court";

c. Revising, at the end of the first sentence, the phrase, "a preliminary application on Form N–401" to read "an application on Form N–400, without fee";

d. Revising, in the second sentence, the reference to Form "N–408" to read "N–400";

e. Removing, in the second sentence, the phrase "§ 332a.13 of";

f. Revising, in the last sentence, the reference to "§ 324.12" to read "§ 324.5(c)"; and

g. Revising, in the last sentence, the phrase, "the disposition of Form N–408 apply equally" to read "copies of the oath will apply".

§ 324.15 [Removed]

30. Section 324.15 is removed.

31. A new part 325 is added to read as follows:

PART 325—NATIONALS BUT NOT CITIZENS OF THE UNITED STATES; RESIDENCE WITHIN OUTLYING POSSESSIONS

Sec.
325.1 [Reserved].
325.2 Eligibility.
325.3 Residence.
325.4 Application; documents.

Authority: 8 U.S.C. 1103, 1436, 1443.

§ 325.1 [Reserved]

§ 325.2 Eligibility.

An applicant for naturalization under section 325 of the Act who owes permanent allegiance to the United States, and who is otherwise qualified may be naturalized if:

(a) The applicant becomes a resident of any State; and

(b) The applicant complies with all of the applicable requirements in parts 316 or 319 of this chapter, as appropriate, except as modified in this part.

§ 325.3 Residence.

(a) For purposes of applying the residence and physical presence requirements in parts 316 and 319 of this chapter, except as they relate to the required three months' residence in a State or Service district, residence and physical presence in an outlying possession of the United States will count as residence and physical presence in the United States.

(b) An applicant who intends to resume residence in an outlying possession after naturalization will be regarded as having established that he or she intends to reside permanently in the United States.

§ 325.4 Application; Documents.

(a) An application for naturalization under this part shall be submitted in compliance with § 316.4(a) of this chapter.

(b) The applicant shall submit with the application:

(1) A birth certificate or other evidence of national status;

(2) Proof of identity; and

(3) Evidence of actual residence in the State or Service district in the United States where the application is filed for three months immediately preceding the filing of the application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls

within the required period of residence under section 316(a) or 319(a) of the Act.

32. Part 327 is revised to read as follows:

PART 327—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO LOST UNITED STATES CITIZENSHIP THROUGH SERVICE IN ARMED FORCES OF FOREIGN COUNTRY DURING WORLD WAR II

Sec.
327.1 Eligibility.
327.2 Procedure for naturalization.

Authority: 8 U.S.C. 1103, 1438, 1443.

§ 327.1 Eligibility.

To be eligible for naturalization under section 327 of the Act, an applicant must establish that:

(a) The applicant, on or after September 1, 1939 and on or before September 2, 1945:

(1) Served in the military, air or naval forces of any country at war with a country with which the United States was at war after December 7, 1941 and before September 2, 1945; or

(2) Took an oath of allegiance or obligation for purposes of entering or serving in the military, air, or, naval forces of any country at war with a country with which the United States was at war after December 7, 1941 and before September 2, 1945;

(b) The applicant was a United States citizen at the time of the service or oath specified in paragraph (a) of this section;

(c) The applicant lost United States citizenship as a result of the service or oath specified in paragraph (a) of this section;

(d) The applicant has been lawfully admitted for permanent residence and intends to reside permanently in the United States;

(e) The applicant is, and has been for a period of at least five years immediately preceding taking the oath required in § 327.2(c), a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(f) The applicant has complied with all other requirements for naturalization as provided in part 316 of this chapter, except for those contained in § 316.2 (a)(3) through (a)(6) of this chapter.

§ 327.2 Procedure for naturalization.

(a) *Application.* An applicant who is eligible for naturalization pursuant to section 327 of the Act and § 327.1 shall submit an Application for Naturalization, Form N–400, in accordance with § 316.4 of this chapter, to the Service office having jurisdiction over the applicant's place of residence. Such application must be accompanied by a statement describing the applicant's eligibility under § 327.1 (a), (b), and (c) and any available documentation to establish those facts.

(b) *Oath of Allegiance.* Upon naturalization of the applicant, the district director shall transmit a copy of the oath of allegiance taken by the applicant to the Department of State.

33. Part 328 is revised to read as follows:

PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH THREE YEARS SERVICE IN ARMED FORCES OF THE UNITED STATES

Sec.
328.1 Definitions.
328.2 Eligibility.
328.3 Jurisdiction.
328.4 Application.

Authority: 8 U.S.C. 1103, 1439, 1443.

§ 328.1 Definitions.

As used in this part:

Honorable service means only that military service which is designated as honorable service by the executive department under which the applicant performed that military service. Any service that is designated to be other than honorable will not qualify under this section.

Service in the Armed Forces of the United States means:

(1) Active or reserve service in the United States Army, United States Navy, United States Marines, United States Air Force, or United States Coast Guard; or

(2) Service in a National Guard unit during such time as the unit is Federally recognized as a reserve component of the Armed Forces of the United States.

§ 328.2 Eligibility.

To be eligible for naturalization under section 328(a) of the Act, an applicant must establish that the applicant:

(a) Has served honorably in and, if separated, has been separated honorably from, the Armed Forces of the United States;

(b) Has served under paragraph (a) of this section for a period of three or more years, whether that service is continuous or discontinuous;

(c) Is a lawful permanent resident of the United States at the time of the examination on the application;

(d) Has been, during any period within five years preceding the filing of the application for naturalization, or the examination on the application if eligible for early filing under section 334(a) of the Act, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States.

(1) An applicant is presumed to satisfy the requirements of this paragraph during periods of honorable service under paragraph (a) of this section.

(2) An applicant must establish that he or she satisfies the requirements of this paragraph from the date of discharge from military until the date of admission to citizenship.

(3) An applicant whose honorable service is discontinuous must also demonstrate that he or she satisfies the requirements of this paragraph for those periods of time when that applicant is not in honorable service.

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(1) An applicant who files an application for naturalization while still in honorable service, or within six months after termination of such service, is generally not required to satisfy the residence requirements under § 316.2(a)(3) through (a)(6) of this chapter; however, if the applicant's military service is discontinuous, that applicant must establish, for periods between honorable service during the five years immediately preceding the date of filing the application, or the examination on the application if eligible for early filing under section 334(a) of the Act, that he or she resided in the United States and in the State or Service district in the United States in which the application is filed.

(2) An applicant who files an application for naturalization more than six months after terminating honorable service must satisfy the residence requirements under § 316.2(a)(3) through (a)(6) of this chapter. However, any honorable service by the applicant within the five years immediately preceding the date of filing of the application shall be considered as residence within the United States for purposes of § 316.2(a)(3) of this chapter.

§ 328.3 Jurisdiction.

An application filed within 6 months after discharge may be filed with any office of the Service within the United States regardless of place of residence of the applicant. An application filed more than 6 months after discharge shall be filed with the Service office having jurisdiction over the State or Service district where the applicant has been residing for at least three months

immediately preceding the filing of the application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act.

§ 328.4 Application.

An applicant for naturalization under this part must submit an Application for Naturalization, Form N–400, as provided in § 316.4 of this chapter. The application must be accompanied by Form N–426, Certificate of Military or Naval Service; and Form G–325B, Biographic Form.

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

34. The authority citation for part 329 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443.

35. Sections 329.1 and 329.2 are revised, and new §§ 329.3 through 329.4 are added to read as follows:

§ 329.1 Definitions.

As used in this part:

Honorable service and separation means service and separation from service which the executive department under which the applicant served determines to be honorable, including:

(1) That such applicant had not been separated from service on account of alienage;

(2) That such applicant was not a conscientious objector who performed no military, air or naval duty; and

(3) That such applicant did not refuse to wear a military uniform.

Service in an active duty status in the Armed Forces of the United States means active service in the following organizations:

(1) United States Army, United States Navy, United States Marines, United States Air Force, United States Coast Guard; or

(2) A National Guard unit during such time as the unit is Federally recognized as a reserve component of the Armed Forces of the United States and that unit is called for active duty.

World War I means the period beginning on April 6, 1917, and ending on November 11, 1918.

§ 329.2 Eligibility.

To be eligible for naturalization under section 329(a) of the Act, an applicant must establish that he or she:

(a) Has served honorably in an active duty status in the Armed Forces of the United States during:

(1) World War I;

(2) The period beginning on September 1, 1939 and ending on December 31, 1946;

(3) The period beginning on June 25, 1950 and ending on July 1, 1955;

(4) The period beginning on February 28, 1961 and ending on October 15, 1978;

(5) The period beginning on October 25, 1983 and ending on November 2, 1983, for active service conducted:

(i) On the Islands of Grenada, Carriacou, Green Hog, and those islands adjacent to Grenada in the Atlantic seaboard where such service was in direct support of the military operations in Grenada; or

(ii) In the air space above Grenada; or

(iii) In the seas adjacent to Grenada where military operations were conducted; or

(iv) At the Grantly Adams International Airport in Barbados; or

(6) Any other period as may be designated by the President in an Executive Order pursuant to section 329(a) of the Act;

(b) If separated, has been separated honorably from service in the Armed Forces of the United States under paragraph (a) of this section;

(c) Satisfies the permanent residence requirement in one of the following ways:

(1) Any time after enlistment or induction into the Armed Forces of the United States, the applicant was lawfully admitted to the United States as a permanent resident; or

(2) At the time of enlistment or induction, the applicant was physically present in the geographical territory of the United States, the Canal Zone, American Samoa, Midway Island (prior to August 21, 1959), or Swain's Island, or in the ports, harbors, bays, enclosed sea areas, or the three-mile territorial sea along the coasts of these land areas, whether or not the applicant has been lawfully admitted to the United States as a permanent resident;

(d) Has been, for at least one year prior to filing the application for naturalization, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(1) The applicant may be of any age;

(2) The applicant is not required to satisfy the residence requirements under § 316.2 (a)(3) through (a)(6) of this chapter; and

(3) The applicant may be naturalized even if an outstanding order to show cause exists under part 242 of this chapter.

§ 329.3 Jurisdiction.

Except as noted in § 329.5, an application under this part may be filed in any office of the Service within the United States regardless of the place of residence of the applicant.

§ 329.4 Application and evidence.

(a) *Application.* An applicant for naturalization under section 329 of the Act must submit an Application for Naturalization, Form N–400, as provided in § 316.4 of this chapter. The application must be accompanied by Form N–426, Certificate of Military or Naval Service, in triplicate, and Form G–325B, Biographic Form.

(b) *Evidence.* The applicant's eligibility for naturalization under § 329.2 (a), (c)(1), or (c)(2) shall be established only by the certification of the executive department under which the applicant served or is serving.

36. Part 330 is revised to read as follows:

PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN

Sec.
330.1 Eligibility.
330.2 Application.

Authority: 8 U.S.C. 1103, 1443.

§ 330.1 Eligibility.

To be eligible for naturalization under section 330 of the Act, an applicant must establish that he or she:

(a) Has been lawfully admitted as a permanent resident of the United States;

(b) Has served honorably or with good conduct, during such periods of lawful residence, in a capacity other than as a member of the Armed Forces of the United States, on board:

(1) A vessel operated by the United States, or an agency thereof, the full legal and equitable title to which is in the United States; or

(2) A vessel, whose home port is the United States, and

(i) Which is registered under the laws of the United States; or

(ii) The full legal and equitable title to which is in a citizen of the United States, or a corporation organized under

the laws of any of the several States of the United States;

(c) Served in the capacity specified in paragraph (b) of this section within five years immediately preceding the date on which the applicant filed the application for naturalization, or on which the alien is examined, if the application was filed early pursuant to section 334(a) of the Act.

(d) Has been, during the five years preceding the filing of the application for naturalization, or the examination on the application if the application was filed early under section 334(a) of the Act, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States.

(1) An applicant is presumed to satisfy the requirements of this paragraph during periods of service in accordance with paragraphs (b) and (c) of this section, as reflected by the records and certificates submitted by the applicant under § 330.2(b).

(2) An applicant must demonstrate that he or she satisfies the requirements of this paragraph for those required periods when that applicant did not perform service in accordance with paragraphs (b) and (c) of this section; and

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that, for purposes of the residence requirements under paragraphs § 316.2 (a)(3) and (a)(4) of this chapter, service satisfying the conditions of this section shall be considered as residence and physical presence within the United States.

§ 330.2 Application.

(a) An applicant for naturalization under section 330 of the Act must submit an Application for Naturalization, Form N-400, to the Service office exercising jurisdiction over the applicant's actual residence in the United States. For the purpose of this section, the term "actual residence" means the applicant's residence and abode ashore as may have been established during the period of qualifying service as a seaman immediately prior to the filing of the application.

(b) An applicant under this part must submit authenticated copies of the records and certificates of either:

(1) The Executive Department or Agencies having custody of records reflecting the applicant's service on a vessel in United States Government Service, if the applicant provided service under § 330.1(b)(1); or

(2) The masters of those vessels maintaining a home port in the United States, and either registered under the laws of the United States or owned by United States citizens or corporations, if the applicant provided service under § 330.1(b)(2).

37. Part 331 is added to read as follows:

PART 331—ALIEN ENEMIES; NATURALIZATION UNDER SPECIFIED CONDITIONS AND PROCEDURES

Sec.
331.1 Definitions.
331.2 Eligibility.
331.3 Investigation.
331.4 Procedures.

Authority: 8 U.S.C. 1103, 1443.

§ 331.1 Definitions.

As used in this part:

Alien enemy means any person who is a native, citizen, subject or denizen of any country, state or sovereignty with which the United States is at war, for as long as the United States remains at war, as determined by proclamation of the President or resolution of Congress.

Denizen includes, but is not limited to, any person who has been admitted to residence and is entitled to certain rights in a country other than the one of the person's nationality. A person holding a status in another country equivalent to that of a lawful permanent resident in the United States would be considered to be a denizen.

§ 331.2 Eligibility.

An alien enemy may be naturalized as a citizen of the United States under section 331 of the Act if:

(a) The alien's application for naturalization is pending at the beginning of the state of war, or the Service has granted the alien an exception from the classification as an alien enemy after conducting an investigation in accordance with § 331.3;

(b) The alien's loyalty to the United States is fully established upon investigation by the Service in accordance with § 331.3; and

(c) The alien is otherwise entitled to admission to citizenship.

§ 331.3 Investigation.

The Service shall conduct a full investigation of any alien enemy whose application for naturalization is pending upon declaration of war or at any time thereafter. This investigation may take place either prior to or after the examination on the application. This investigation shall encompass, but not be limited to, the applicant's loyalty to the United States and attachment to the country, state, or sovereignty with which the United States is at war.

§ 331.4 Procedures.

(a) Upon determining that an applicant for naturalization is an alien enemy, the Service shall notify the applicant in writing of its determination. Upon service of this notice to the applicant, the provisions of section 336(b) of the Act will no longer apply to such applicant, until that applicant is no longer classifiable as an alien enemy.

(b) Upon completion of the investigation described in § 331.3, if the Service concludes that the applicant's loyalty and attachment to the United States have been fully established, the application may be granted.

PART 332—NATURALIZATION ADMINISTRATION

38. The heading for part 332 is revised as set forth above.

39. The authority citation for part 332 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1447.

§§ 332.11 and 332.13 [Redesignated as §§ 335.2 and 335.3].

40. Sections 332.11 and 332.13 are redesignated as §§ 335.2 and 335.3, respectively.

§ 332d.1 [Redesignated as § 332.1].

41. Section 332d.1 is redesignated as § 332.1, and is revised to read as follows:

§ 332.1 Designation of service employees to administer oaths and conduct examinations and hearings.

(a) *Examinations.* All immigration examiners are hereby designated to conduct the examination for naturalization required under section 335 of the Act. A district director may also designate other officers of the Service, who are classified at grade levels equal to or higher than the grade of the immigration examiners, to conduct the examination under section 335 of the Act, provided that each officer so designated has received appropriate training.

(b) *Hearings.* Section 336 of the Act authorizes immigration officers to conduct hearings under that section. A district director may designate the officers who are designated under paragraph (a) of this section to conduct hearings under section 336 of the Act.

(c) *Depositions.* All immigration officers and other officers or employees of the Service who are classified at grade levels equal to or higher than the grade of the immigration officers are hereby designated to take depositions in

matters relating to the administration of naturalization and citizenship laws.

(d) *Oaths and affirmations.* All immigration officers and other officers or employees of the Service who are classified at grade levels equal to or higher than the grade of the immigration officers are hereby designated to administer oaths or affirmations except for the oath of allegiance as provided in § 337.2 of this chapter.

§ 332c.1 [Redesignated as § 332.2].

42. Section 332c.l is redesignated as § 332.2 and is amended, by revising in the third sentence the word "INS" to read "Service".

§§ 332b.1, 332b.3, and 332b.4 [Removed].

43. Sections 332b.1, 332b.3, and 332b.4 are removed.

44. A new § 332.3 is added to read as follows:

§ 332.3 Instruction and training in citizenship responsibilities.

(a) Headquarters and the field offices of the Service shall cooperate with appropriate authorities or organizations in the community to establish and maintain classes within, or under the supervision of, the public schools, for the purpose of preparing applicants for naturalization to accept the duties and responsibilities of citizenship. Service officers shall, whenever practical, visit such classes or otherwise provide necessary liaison with those authorities or organizations that are providing such educational preparation.

(b) Citizenship textbooks and other study materials are intended for the free use of applicants for naturalization who are enrolled in instructional courses in or under the supervision of the public schools as provided in paragraph (a) of this section. Such textbooks and other study materials shall be distributed by the regional offices of the Service to the appropriate representatives of the public schools upon their written and signed requests.

(c) Public school certificates attesting to the attendance and progress of enrollees shall be given favorable consideration by Service officers in determining the applicant's overall knowledge and understanding of the fundamentals of the history, principles, and form of government of the United States, and the applicant's ability to read, write, and speak the English language.

§ 332b.5 [Redesignated as § 332.4].

45. Section 332b 5 is redesignated as § 332.4.

§ 332a.1, 332.11 and 332.12 [Redesignated § 332.5 (a), (c), and (d)].

46. A new § 332.5 is added. The text of §§ 332a.1, 332a.11 and 332a.12 are redesignated as new paragraphs (a), (c), and (d) of new § 332.5, and paragraph headings are added to read as follows:

§ 332.5 Official forms for use by clerks of court.

(a) Official forms essential to exercise of jurisdiction. * * *

(c) Initial application for official forms. * * *

(d) Subsequent application for use of official forms. * * *

§ 332a.3 [Redesignated § 332.5(b)]

47. Section 332a.2 is redesignated as § 332.5(b), and is revised to read as follows:

* * * * *

(b) *Official forms prescribed for use of clerks of naturalization courts.* Clerks of courts shall use only the forms listed in § 499.1 of this chapter in the exercise of naturalization jurisdiction.

* * * * *

Parts 332a, 332b, 332c, and 332d [Removed].

48. Parts 332a, 332b, 332c, and 332d are removed.

49. Part 333 is revised to read as follows:

PART 333—PHOTOGRAPHS

Sec.
333.1 Description of required photographs.
333.2 Attachment of photographs to documents.

Authority: 8 U.S.C. 1103, 1443.

§ 333.1 Description of required photographs.

(a) Every applicant required to furnish photographs of himself or herself under section 333 of the Act and this chapter shall submit three identical color photographs that shall have a glossy finish and shall be no smaller than 40 mm in length by 35 mm in width, and no larger than 80 mm in length by 60 mm in width; shall be unmounted and printed on a thin paper; shall have a white background; shall clearly show a three-quarter profile view of the features of the applicant with head bare (unless the applicant is wearing a headdress as required by a religious order of which he or she is a member), with the distance from the top of the head to point of chin approximately 30 mm; and shall have been taken within 30 days of the date they are furnished. The image must be at least 26 mm in width. Photographs must be in natural color.

(b) The applicant, except in the case of a child or other person physically incapable of signing his or her name, shall sign each copy of the photograph on the front of the photograph with his or her full true name, in such manner as not to obscure the features. An applicant unable to write may make the signature by a mark. An applicant for naturalization must sign the photographs in the English language, unless the applicant is exempt from the English language requirement of part 312 of this chapter and is unable to sign in English, in which case the photographs may be signed in any language.

(c) (1) If a child is unable to sign his or her name, the photographs must be signed by a parent or guardian, the signature reading "(name of child) by (name of parent or guardian)."

(2) If an adult is physically unable to sign or make a mark, a guardian or the Service employee conducting the interview will sign the photographs as provided in paragraph (c)(1) of this section.

(d) The photographs must be signed when submitted with an application if the instructions accompanying the application so require. If signature is not required by the instructions, the photographs are to be submitted without being signed and shall be signed at such later time during the processing of the application as may be appropriate.

§ 333.2 Attachment of photographs to documents.

A signed photograph of the applicant must be securely and permanently attached to each certificate of naturalization or citizenship, to each original and duplicate declaration of intention issued by the Service, and to each replacement copy of a declaration of intention, certificate of naturalization, or certificate of citizenship issued by the Service. If a seal is affixed to the document, the imprint of a part of the seal must extend over the lower portion of the photograph in such a manner as not to obscure the features of the applicant.

PART 334—APPLICATION FOR NATURALIZATION

50. The heading for part 334 is revised as set forth above.

51. The table of contents and the authority citation for part 334 are revised to read as follows:

334.1 Filing of application for naturalization.
334.2 Application for naturalization.
334.3 Oath or affirmation on application.
334.4 Investigation and report if applicant is sick or disabled.
334.5 Amendment of application for naturalization, reopening proceedings.
334.6–334.10 [Reserved].

334.11 Declaration of intention.
334.12–334.15 [Reserved]
334.16 Amendment of petition for naturalization.
334.17 Transfer of petition for naturalization.
334.18 Withdrawal of petition and failure to prosecute.

Authority: 8 U.S.C. 1103, 1443.

§ 334.3, 334.13, 334.15, and 334.21 [Removed]

52. Sections 334.3, 334.13, 334.15, and 334.21 are removed.

53. Section 334.1 is revised to read as follows:

§ 334.1 Filing of application for naturalization.

Any person who is an applicant under sections 316, 319, 322, 324, 325, 327, 328, 329, or 330 of the Act and the corresponding parts of this chapter, may apply for naturalization in accordance with the procedures prescribed in this chapter at the Service office indicated in the appropriate part of this chapter.

54. Part 334 is amended by

a. Redesignating § 334.2 as § 334.3;

b. Redesignating § 334.11 as § 334.2;

c. Redesignating § 334.14 as § 334.4; and

d. Revising newly redesignated §§ 334.2, 334.3 and 334.4 to read as follows:

§ 334.2 Application for naturalization.

(a) An applicant may file an application for naturalization by filing a completed Form N–400 signed in the applicant's own handwriting, if physically able to do so, and by including any other documents required by parts 316, 319, 322, 324, 325, 327, 328, 329, and 330 of this chapter, as appropriate. An application prepared for a person physically unable to write shall be signed by the preparer, in the space marked "Preparer's signature." The applicant shall include the fee as required in § 103.7 of chapter B of this title, and a photocopy of the applicant's Alien Registration Card (Form I–551 or Form I–151).

(b) An application for naturalization may be filed up to 90 days prior to the completion of the required period of residence, which may include the three-month period of residence required to establish jurisdiction under section 316(a) or 319(a) of the Act.

§ 334.3 Oath or affirmation on application.

The application for naturalization shall be executed under the following oath (or affirmation): "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, and the evidence submitted with it, are true and correct to the best of my knowledge and belief."

§ 334.4 Investigation and report if applicant is sick or disabled.

Whenever it appears that an applicant for naturalization may be unable, because of sickness or other disability, to appear for the initial examination on the application or for any subsequent hearing, the district director shall cause an investigation to be conducted to determine the circumstances surrounding the sickness or disability. The district director shall determine, based on available medical evidence, whether the sickness or disability is of a nature which so incapacitates the applicant as to prevent the applicant's appearance at a Service office or court having jurisdiction over the applicant's place of residence. If so, the district director may designate another place where the applicant may appear for the requisite naturalization proceedings.

55. Section 334.5 is added to read as follows:

§ 334.5 Amendment of application for naturalization; reopening proceedings.

(a) *Clerical amendments—(1) By applicant.* An applicant may request that the application for naturalization be amended either prior to or subsequent to the administration of the oath of allegiance.

(2) *By Service.* The Service may amend, at any time, an application for naturalization when in receipt of information that clearly indicates that a clerical error has occurred.

(3) *Amendment procedure.* Any amendment will be limited to the correction of clerical errors arising from oversight or omission. If the amendment is approved, the amended application shall be filed with the original application for naturalization.

(b) *Substantive amendments.* Any substantive amendments which affect the jurisdiction or the decision on the merits of the application will not be authorized. When the Service is in receipt of any information that would indicate that an application for naturalization should not have been granted on the merits, the Service may institute proceedings to reopen the application before admission to citizenship, or to revoke the naturalization of a person who has been admitted to citizenship, in accordance with section 340 of the Act and § 335.5 of this chapter.

§§ 334.6—334.10 [Reserved]

56. Sections 334.6–334.10 are reserved.

§ 334a.1 [Redesignated as § 334.11].

57. Section 334a.1 is redesignated as § 334.11, and is revised to read as follows:

§ 334.11 Declaration of intention.

Any person who is a lawful permanent resident over 18 years of age may file an application for a declaration of intention to become a citizen of the United States. Such application, with the requisite fee, shall be filed on Form N–300 with the district director of the Service office having jurisdiction over the applicant's place of residence. The original application for the declaration of intention shall be retained and filed in the applicant's Service file. The duplicate copy of the application shall be filed in chronological order in the official files of the district office. The declaration of intention shall be delivered to the applicant.

§§ 334.12–334.15 [Reserved]

58. Sections 334.12 through 334.15 are reserved.

§ 334.16 Amendment of petition for naturalization.

59. Section 334.16 is amended by:

a. Revising the heading as set forth above;

b. Adding in paragraph (a), in the first sentence, the phrase "filed prior to October 1, 1991" immediately preceding the phrase ", while such", and by removing the phrase "application or" immediately thereafter;

c. Removing, in paragraph (a), each reference to "or application" and "or applicant";

d. By removing in paragraph (b), in the paragraph heading and in the first sentence, the phrase "or application".

§ 334.17 [Amended]

60. Section 334.17 is amended by adding, in paragraph (a), immediately following the phrase "petition for naturalization" the phrase ", filed prior to October 1, 1991,".

§ 334.18 [Amended]

61. Section 334.18 is amended by:

a. Adding, in the first sentence of paragraph (a), immediately following the phrase "petition for naturalization" the phrase ", filed prior to October 1, 1991,"

b. Removing, in the first sentence, the phrase "after the filing thereof".

PART 334a—[REMOVED]

62. Part 334a is removed.

PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION

63. The heading of part 335 is revised as set forth above.

64. The table of contents and the authority citation for part 335 are revised to read as follows:

Sec.
335.1 Investigation of applicant.
335.2 Examination of applicant.
335.3 Determination on application; continuance of examination.
335.4 Use of record of examination.
335.5 Receipt of derogatory information after grant.
335.6–335.8 [Reserved].
335.9 Transfer of application.
335.10 Withdrawal of application.
335.11 Preliminary examinations on petitions for naturalization filed prior to October 1, 1991.
335.12 Recommendations on petitions for naturalization of the designated examiner and regional administrator; notice.
335.13 Notice of recommendation on petitions for naturalization of designated examiner.

Authority: 8 U.S.C. 1103, 1443, 1447.

65. Part 335 is further amended by:

a. Adding a new § 335.1;

b. Revising redesignated §§ 335.2 and 335.3;

c. Adding new §§ 335.4 and 335.5;

d. Reserving §§ 335.6 through 335.8; and

e. Adding new §§ 335.9 and 335.10, to read as follows:

§ 335.1 Investigation of applicant.

Subsequent to the filing of an application for naturalization, the Service shall conduct an investigation of the applicant. The investigation shall consist, at a minimum, of a review of all pertinent records, police department checks, and a neighborhood investigation in the vicinities where the applicant has resided and has been employed, or engaged in business, for at least the five years immediately preceding the filing of the application. The district director may waive the neighborhood investigation of the applicant provided for in this paragraph.

§ 335.2 Examination of applicant.

(a) *General.* Subsequent to the filing of an application for naturalization, each applicant shall appear in person before a Service officer designated to conduct examinations pursuant to § 332.1 of this chapter. The examination shall be uniform throughout the United States and shall encompass all factors relating to the applicant's eligibility for naturalization. The applicant may request the presence of an attorney or representative who has filed an appearance in accordance with part 292 of chapter B of this title, to observe the examination and make notes without otherwise participating in the examination procedure.

(b) *Procedure.* Prior to the beginning of the examination, the Service officer shall make known to the applicant the official capacity in which the officer is conducting the examination. The applicant shall be questioned, under oath or affirmation, in a setting apart from the public. Whenever necessary, the examining officer shall correct written answers in the application for naturalization to conform to the oral statements made under oath or affirmation. The Service officer shall maintain, for the record, brief notations of the examination for naturalization. At a minimum, the notations shall include a record of the test administered to the applicant on English literacy and basic knowledge of the history and government of the United States. The Service officer may have a stenographic, mechanical, electronic, or videotaped transcript made, or may prepare an affidavit covering the testimony of the applicant. The questions to the applicant shall be repeated in different form and elaborated, if necessary, until the officer conducting the examination is satisfied that the applicant either fully understands the questions or is unable to understand English. The applicant and the Service shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(c) *Witnesses.* Witnesses, if called, shall be questioned to discover their own credibility and competency, as well as the extent of their personal knowledge of the applicant and his or her qualifications to become a naturalized citizen.

(1) *Issuance of subpoenas.* Subpoenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the examining officer upon his or her own volition, or upon written request of the applicant or his or her attorney or representative. Such written request shall specify, as nearly as possible, the relevance, materiality, and scope of the testimony or documentary evidence sought and must show affirmatively that the testimony or documentary evidence cannot otherwise be produced.

(2) *Service of subpoenas.* Subpoenas shall be issued on Form I–138, and a record shall be made of service. The subpoena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director.

(3) *Witness fees.* Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at whose instance the subpoena is issued, at rates allowed and under conditions prescribed by the Service. Before issuing a subpoena, the officer may require the deposit of an amount adequate to cover the fees and mileage involved.

(4) *Failure to appear.* If the witness subpoenaed neglects or refuses to testify or to produce documentary evidence as directed by the subpoena, the district director shall request that the United States Attorney for the proper district report such neglect or refusal to any District Court of the United States, and file a motion in such court for an order directing the witness to appear and to testify and produce the documentary evidence described in the subpoena.

(5) *Extraterritorial testimony.* The testimony of a witness may be taken outside the United States. The witness's name and address shall be sent to the Service office abroad which has jurisdiction over the witness's residence. The officer taking the statement shall be given express instructions regarding any aspect of the case which may require special development or emphasis during the interrogation of the witness.

(d) *Record of examination.* At the conclusion of the examination, all corrections made on the application form and all supplemental material shall be consecutively numbered and listed in the space provided on the applicant's affidavit contained in the application form. The affidavit must then be subscribed and sworn to, or affirmed, by the applicant and signed by the Service officer. Evidence received by the officer shall be placed into the record for determination of the case. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record. A deposition or statement taken by a Service officer during the initial examination or any subsequent examination shall be included as part of the record on the application.

(e) *Use of interpreter.* If the use of an interpreter is authorized pursuant to § 312.4 of this chapter, the examining officer shall note on the application the use and identity of any interpreter. If the Service officer is proficient in the applicant's native language, the Service officer may conduct the examination in that language with the consent of the applicant.

§ 335.3 Determination on application; continuance of examination.

(a) The Service officer shall grant the application if the applicant has complied with all requirements for naturalization under this chapter. A decision to grant or deny the application shall be made at the time of the initial examination or

within 120-days after the date of the initial examination of the applicant for naturalization under § 335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter.

(b) Rather than make a determination on the application, the Service officer may continue the initial examination on an application for one reexamination, to afford the applicant an opportunity to overcome deficiencies on the application that may arise during the examination. The officer must inform the applicant of the grounds to be overcome. The applicant shall not be required to appear for a reexamination earlier than 60 days after the first examination. However, the reexamination on the continued case shall be scheduled within the 120–day period after the initial examination, except as otherwise provided under § 312.5(b) of this chapter. If the applicant is unable to overcome the deficiencies in the application, the application shall be denied pursuant to § 336.1 of this chapter.

§ 335.4 Use of record of examination.

In the event that an application is denied, the record of the examination on the application for naturalization, including the executed and corrected application form and supplements, affidavits, transcripts of testimony, documents, and other evidence, shall be submitted to the Service officer designated in § 332.1 of this chapter to conduct hearings on denials of applications for naturalization in accordance with part 336 of this chapter. The record of the examination shall be used for examining the petitioner and witnesses, if required to properly dispose of issues raised in the matter.

§ 335.5 Receipt of derogatory information after grant.

In the event that the Service receives derogatory information concerning an applicant whose application has already been granted as provided in § 335.3(a) of this chapter, but who has not yet taken the oath of allegiance as provided in part 337 of this chapter, the Service shall remove the applicant's name from any list of granted applications or of applicants scheduled for administration of the oath of allegiance, until such time as the matter can be resolved. The Service will notify the applicant of the receipt of derogatory information, with a motion to reopen the previously adjudicated application, giving the applicant 15 days to respond. If the applicant overcomes the derogatory information, the application will be granted and the applicant will be scheduled for administration of the oath of allegiance. Otherwise the motion to reopen will be granted and the application will be denied pursuant to § 336.1 of this chapter.

§§ 335.6–335.8 [Reserved]

§ 335.9 Transfer of application.

(a) *Request for transfer of application.* An applicant who, after filing an application for naturalization, changes residence, or plans to change residence within three months, may request, in writing, that a pending application be transferred from the current Service office to the Service office having jurisdiction over the applicant's new place of residence. The request shall be submitted to the office where the application was originally filed. The request shall include the applicant's name, alien registration number, date of birth, complete current address including name of the county, complete address at the time of filing the application, reason for the request to transfer the application, and the date the applicant moved or intends to move to the new jurisdiction.

(b) *Discretion to authorize transfer.* The district director may authorize the transfer of an application for naturalization after such application has been filed. In the event that the district director does not consent to the transfer of the application, the application for naturalization shall be adjudicated on its merits by the Service office retaining jurisdiction, and, if denied, a final order will be issued.

§ 335.10 Withdrawal of application.

An applicant may request, in writing, that his or her application, filed with the Service, be withdrawn. If the district director consents to the withdrawal, the application will be denied without further notice to the applicant and without prejudice to any future application. The withdrawal by the applicant will constitute a waiver of any review pursuant to part 336 of this chapter. If the district director does not consent to the withdrawal, the application for naturalization shall be adjudicated on its merits.

66. Section 335.11 is amended by:

a. Revising the heading and paragraph (a) to read as follows:

§ 335.11 Preliminary examinations on petitions for naturalization filed prior to October 1, 1991.

(a) *When held.* Continued preliminary examinations shall be held on petitions for naturalization filed prior to October 1, 1991 when it is determined that further testimony is needed for the designated examiner to prepare a recommendation to the court consistent with § 335.12. The examinations shall be open to the public.

* * * * *

b. Amending paragraphs (b) through (g) by adding after the word "his"or "him" at each occurrence the phrase "or her"; and adding after the word "he" at each occurrence the phrase "or she".

c. Removing paragraph (h).

§ 335.12 Recommendations on petitions for naturalization of the designated examiner and regional administrator; notice.

67. Section 335.12 is amended by:

a. Revising the heading as set forth above;

b. Adding, in the first sentence, after the phrase "preliminary examination" the phrase "on a petition for naturalization filed prior to October 1, 1991";

c. Revising the phrase "regional commissioner" to read "regional operations liaison officer" at each occurrence;

d. Adding, in the second sentence, after the word "his" the phrase "or her";

e. Adding, in the fourth sentence, after the word "him" the phrase "or her"; and

f. Adding, in the fifth sentence, after the words "he" and "him" the phrases "or she" and "or her", respectively.

§ 335.13 Notice of recommendation on petitions for naturalization of designated examiner.

68. Section 335.13 is amended by:

a. Revising the heading as set forth above;

b. Adding, in the first sentence of paragraph (a), after the phrase "denial of the petition" the phrase "filed prior to October 1, 1991";

c. Adding, in the first sentence of paragraph (b), after the phrase "granting of the petition" the phrase "filed prior to October 1, 1991";

d. Revising the phrase "regional commissioner to read" "regional administrator" at each occurrence;

e. Adding, in paragraphs (a), (b), and (c) after the word "his" the phrase "or her" at each occurrence; and

f. Adding, in the first sentence of paragraph (d), after the word "he" the phrase "or she".

PARTS 335a AND 335c—[REMOVED]

69. Parts 335a and 335c are removed.

70. Part 336 is revised to read as follows:

PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

Sec.
336.1 Denial after section 335 examination.
336.2 Hearing before an immigration officer.
336.3–336.8 [Reserved].
336.9 Judicial review of denial determinations on applications for naturalization.

Authority: 8 U.S.C. 1103, 1443, 1447, 1448.

§ 336.1 Denial after section 335 examination.

(a) After completing all examination procedures contained in part 335 of this chapter and determining to deny an application for naturalization, the Service shall serve a written notice of denial upon an applicant for naturalization no later than 120 days after the date of the applicant's first examination on the application.

(b) A notice of denial shall be prepared in a written, narrative format, and shall recite, in clear concise language, the pertinent facts upon which the determination was based, the specific legal section or sections applicable to the finding of ineligibility, and the conclusions of law reached by the examining officer in rendering the decision. Such notice of denial shall also contain a specific statement of the applicant's right either to accept the determination of the examining officer, or request a hearing before an immigration officer.

(c) Service of the notice of denial may be made in person or by certified mail to the applicant's last known address, or upon the attorney or representative of record as provided in part 292 of this chapter.

§ 336.2 Hearing before an immigration officer.

(a) The applicant, or his or her authorized representative, may request a hearing on the denial of the applicant's application for naturalization by filing a request with the Service within thirty days after the applicant receives the notice of denial under § 336.1.

(b) Upon receipt of a timely request for a hearing, the Service shall schedule a review hearing before an immigration officer, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review shall be with an officer other than the officer who conducted the original examination under section 335 of the Act or who rendered the Service determination upon which the hearing is based, and who is classified at a grade level equal to or higher than the grade of the examining officer. The reviewing officer shall have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and determination of the original examining officer or to redetermine the original decision of the Service in whole or in part. The reviewing officer shall also have the discretion to review any administrative record which was created as part of the examination procedures as well as Service files and reports. He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization. Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further examinations with respect to essential naturalization requirements, such as literacy or civics knowledge, the reviewing immigration officer may, in his or her discretion, conduct a full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.

§§ 336.3–336.8 [Reserved]

§ 336.9 Judicial review of denial determinations on applications for naturalization.

(a) *General.* The provisions in part 310 of this chapter shall provide the sole and exclusive procedures for requesting judicial review of final determinations on applications for naturalization made pursuant to section 336(a) of the Act and the provisions of this chapter by the Service on or after October 1, 1991.

(b) *Filing a petition.* Under these procedures an applicant shall file a petition for review in the United States District Court having jurisdiction over his or her place of residence, in accordance with chapter 7 of title 5, United States Code, within a period of not more than 120 days after the Service's final determination. The petition for review shall be brought against the Immigration and Naturalization Service, and service of the petition for review shall be made upon the Attorney General of the United States, and upon the official in charge of the Service office where the hearing was held pursuant to § 336.2.

(c) *Standard of review.* The review will be *de novo,* and the court will make its own findings of fact and conclusions of law. The court may also conduct, at the request of the petitioner, a hearing *de novo* on the application for naturalization.

(d) *Exhaustion of remedies.* A Service determination denying an application for naturalization under section 335(a) of the Act shall not be subject to judicial review until the applicant has exhausted those administrative remedies available to the applicant under section 336 of the Act. Every petition for judicial review shall state whether the validity of the final determination to deny an application for naturalization has been upheld in any prior administrative proceeding and, if so, the nature and date of such proceeding and the forum in which such proceeding took place.

PART 337—OATH OF ALLEGIANCE

71. The authority citation for part 337 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448.

72. Section 337.1 is amended by:

a. Revising paragraph (a);

b. Adding at the end of paragraph (b), the sentence "Any reference to 'oath of allegiance' in this chapter is understood to mean equally 'affirmation of allegiance' as described in this paragraph."

c. Adding, in paragraph (c) after the word "his" or "him" the phrase "or her" at each occurrence.

d. Adding a new paragraph (d) to read as follows:

§ 337.1 Oath of Allegiance.

(a) *Form of oath.* Except as otherwise provided in the Act and after receiving notice from the district director that such applicant is eligible for naturalization pursuant to § 335.3 of this chapter, an applicant for naturalization shall, before being admitted to citizenship, take in a public ceremony held within the United States the following oath of allegiance, to a copy of which the applicant shall affix his or her signature:

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

(b) * * * Any reference to "oath of allegiance" in this chapter is understood to mean equally "affirmation of allegiance" as described in this paragraph.

* * * * *

(d) *Renunciation of title or order of nobility.* A petitioner or applicant for naturalization who has borne any hereditary title or has been of any of the orders of nobility in any foreign state shall, in addition to taking the oath of allegiance prescribed in paragraph (a) of this section, make under oath or affirmation in public an express renunciation of such title or order of nobility, in the following form:

(1) I further renounce the title of (give title or titles) which I have heretofore held; or

(2) I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged.

§ 337.2 [Redesignated as § 337.9]

73. Section 337.2 is redesignated as § 337.9.

74. New § 337.2 is added to read as follows:

§ 337.2 Oath administered by the Immigration and Naturalization Service.

(a) *Public ceremony.* An applicant for naturalization who has elected to have his or her oath of allegiance administered by the Service shall appear in person in a public ceremony. Such ceremony shall be held at a time and place designated by the Service within the United States and within the jurisdiction where the application for naturalization was filed, or into which the application for naturalization was transferred pursuant to § 335.9 of this chapter. Such ceremonies shall be conducted at regular intervals, but in all events at least once monthly. Such ceremonies shall be presented in such a manner as to preserve the dignity and significance of the occasion. District directors shall assure that ceremonies conducted in their districts, inclusive of those held by suboffice managers, are in keeping with the Model Plan for Naturalization Ceremonies. Organizations traditionally involved in activities surrounding the ceremony should be encouraged to participate in Service-administered ceremonies by local arrangement.

(b) *Authority to administer oath of allegiance.* The authority of the Attorney General to administer the Oath of Allegiance shall be delegated to the following officers of the Service: the Commissioner; district directors; deputy district directors; officers-in-charge; or persons acting in behalf of such officers due to their absence or because their positions are vacant. In exceptional cases where the district director or officer-in-charge determines that it is appropriate for employees of a different rank to conduct ceremonies, the district director or officer-in-charge may make a request through the Commissioner to the Assistant Commissioner, Adjudications, for permission to delegate such authority. The request shall furnish the reasons for seeking exemption from the requirements of this paragraph. The Commissioner may delegate such authority to such other officers of the Service or the Department of Justice as he may deem appropriate.

§ 337.3 [Removed]

75. Section 337.3 is removed.

§ 337.11 [Redesignated as § 337.3]

76. Section 337.11 is redesignated as § 337.3, and is revised to read as follows:

§ 337.3 Oath of Allegiance administered to sick and disabled.

Whenever it appears that an applicant for naturalization may be unable, because of sickness or other disability, to take the oath of allegiance in a public ceremony, the district director shall cause an investigation to be conducted to determine the circumstances surrounding the sickness or disability. The district director shall also determine whether, as a matter of discretion, the oath may be administered at another place within his or her area of jurisdiction in the United States. The exercise of this alternative method of administering the oath shall be deemed appropriate only in those circumstances where the sickness or other disability so incapacitates the applicant as to prevent him or her from appearing at a public oath administration ceremony.

77. Section 337.4 is revised to read as follows:

§ 337.4 When requests for change of name granted.

When the court has granted the petitioner's change of name request, the petitioner shall subscribe his or her new name to the written oath of allegiance.

§§ 337.5–337.7 [Reserved]

78. Sections 337.5 through 337.7 are reserved.

79. A new § 337.8 is added to read as follows:

§ 337.8 Oath administered by the courts.

(a) An applicant for naturalization shall notify the Service at the time of the filing of, or no later than at the examination on, the application, of his or her election to have the oath of allegiance administered in an appropriate court having jurisdiction over the applicant's place of residence. In order to assist the applicant in making an informed election, the Service shall advise the candidate for naturalization of the upcoming administrative and court oath ceremonies at which the applicant's naturalization may be scheduled if the applicant is found eligible for naturalization.

(b) In those instances in which the applicant has elected to have the oath administered in a court ceremony, the Service shall notify both the applicant and the clerk of court, in writing, that the applicant has been determined by the Attorney General to be eligible for admission to United States citizenship upon taking the requisite oath of allegiance and renunciation in a public ceremony to be scheduled by the court.

(c) After administering the oath of allegiance, the clerk of court shall issue to each person appearing in such ceremonies a document evidencing that such an oath was administered in accordance with § 339.1 of this chapter and shall make and keep on file, as part of the court's record system, evidence that such document was issued. The document prepared by the clerk shall not constitute proof of naturalization, and such document shall clearly reflect on its face the ceremonial nature of the oath-taking. Such document shall not be considered as evidence of United States citizenship.

(d) Within thirty days after the applicant has appeared in court to take the oath, the clerk of the court that administered the oath shall forward to the Service evidence of the oath having been administered, on forms prescribed for such purpose. The court shall also advise the Service of any change of name, or other judicial relief that may have been granted by the court as part of the oath administration proceeding, by forwarding a certified copy of the court order reflecting the exercise of judicial authority in the matter.

(e) Upon receipt of written confirmation from the court that the oath of allegiance has been administered, the Service shall deliver to the applicant within a reasonable period thereafter, a Certificate of Naturalization in accordance with part 338 of this chapter. The presence of a Service employee at the judicial ceremony to assist in the personal delivery of the Certificate of Naturalization shall not relieve the clerk of court of the requirements of paragraph (d) of this section.

80. Newly redesignated § 337.9 is revised to read as follows:

§ 337.9 Effective date of naturalization.

(a) An applicant for naturalization shall be deemed a citizen of the United States as of the date on which the applicant takes the prescribed oath of

allegiance, administered either by the Service in an administrative ceremony or in a ceremony conducted by an appropriate court under § 337.8.

(b) When the taking of the oath is waived for a child pursuant to part 322 of this chapter, the child shall be deemed a citizen of the United States as of the date upon which the waiver was granted by the Service. The appearance of the child and the child's parent(s) at an oath ceremony, if the oath is waived under this paragraph, is not required. Nothing in this paragraph is to be construed as preventing the appearance of the child and parent(s) at an oath ceremony.

PART 338—CERTIFICATE OF NATURALIZATION

81. The authority citation for part 338 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443.

82. New §§ 338.1 and 338.2 are added to read as follows:

§ 338.1 Execution and issuance of certificate.

(a) *Issuance.* When an applicant for naturalization has taken and subscribed to the oath of allegiance in accordance with §§ 337.1, 337.2, and 337.3 of this chapter, a Certificate of Naturalization shall be issued to the applicant by the Service. When the oath of allegiance was taken before a Federal or State court in accordance with § 337.8 of this chapter, the Certificate shall not be issued until verification of the date and place of oathtaking is received from the court. The certificate shall be signed by the applicant. The Commissioner's signature shall be affixed to the certificate.

(b) *Execution of certificate.* The certificate shall be issued to the applicant in his or her true, full, and correct name as it exists at the time of the administration of the oath of allegiance. The certificate shall show, under "former nationality," the name of the applicant's last country of citizenship, as shown in the application and Service records, even though the applicant may be stateless at the time of admission to citizenship. Photographs shall be affixed to the certificate in the manner provided by part 333 of this chapter. The original certificate shall be delivered to the applicant in person or by certified mail.

§ 338.2 Execution in case name is changed.

Whenever the name of an applicant has been changed by order of a court as a part of a naturalization, the clerk of court, or his or her authorized deputy, shall forward a copy of the order changing the applicant's name with the notifications required by part 339 of this chapter. The Certificate of Naturalization will be issued to the applicant in the name as changed.

§§ 338.14 through 338.16 [Redesignated as §§ 338.3 through 338.5]

83. Sections 338.14 through 338.16 are redesignated as §§ 338.3 through 338.5, and are revised to read as follows:

§ 338.3 Delivery of certificates.

No Certificate of Naturalization will be delivered in any case in which the naturalized person has not surrendered his or her alien registration receipt card to the Service. Upon a finding that the card is destroyed or otherwise unavailable, the district director may waive the surrender of the card and the Certificate of Naturalization shall then be delivered to the naturalized person.

§ 338.4 Signing of certificate.

If a child who has been admitted to citizenship under section 322 of the Act is unable to sign his or her name, the Certificate of Naturalization must be signed by the citizen parent who submitted the application for the child. The signature will read "(name of naturalized child) by (signature of parent)". A naturalized person whose application was signed in a foreign language may sign the certificate of naturalization in the same manner.

§ 338.5 Correction of certificates.

(a) Whenever a Certificate of Naturalization has been delivered which does not conform to the facts shown on the application for naturalization, or a clerical error was made in preparing the certificate, an application for issuance of a corrected certificate, Form N–565, without fee, may be filed by the naturalized person. The application shall be filed at the Service office having jurisdiction over the place of residence of the applicant.

(b) If the certificate was originally issued by a clerk of court under a prior statute and the district director finds that a correction is justified and can be made without mutilating the certificate, he or she shall authorize the clerk of the issuing court, or his or her authorized deputy, on Form N–459, in duplicate, to make the necessary correction and to place a dated endorsement on the reverse of the certificate, over the clerk's or deputy's signature and the seal of the court, explaining the correction. The authorization shall be filed with the naturalization record of the court, the corrected certificate shall be returned to the naturalized person, and the duplicate Form N–459 shall be endorsed to show the date and nature of the correction and endorsement made, and then returned to the district director. No fee shall be charged the naturalized person for the correction. The district director shall forward the duplicate endorsed authorization to the official Service file.

(c) If the certificate was originally issued by the Service, and the district director finds that a correction was justified, the necessary correction shall be made to the certificate and a dated endorsement made on the reverse of the certificate, over the signature of the district director and the seal of the Department of Justice. A notation regarding the correction shall be placed on the Form N–565 which shall be forwarded to the Service file.

(d) When a correction made pursuant to paragraph (b) or (c) of this section would or does result in mutilation of a certificate, the district director shall issue a replacement certificate on Form N–570 and the surrendered certificate shall be destroyed.

(e) The correction will not be deemed to be justified where the naturalized person later alleges that the name or date of birth which the applicant stated to be his or her correct name or date of birth at the time of naturalization was not in fact his or her name or date of birth at the time of the naturalization.

§§ 338.6–338.10 [Reserved]

84. Sections 338.6 through 338.10 are reserved.

85. Section 338.11 is amended by revising the heading and the first sentence of paragraph (a) to read as follows:

§ 338.11 Execution and issuance of Certificate of Naturalization by clerk of court.

(a) When a petitioner for naturalization, whose petition for naturalization was filed prior to October 1, 1991, has taken and subscribed to the oath of allegiance, and a final order of citizenship has been signed by the court, a certificate of naturalization shall be issued in duplicate by the clerk of court on Form N–550 (rev. 11–1–87) or N–550C.

* * *

* * * * *

86. Section 338.12 is amended by revising the heading and the first sentence to read as follows:

§ 338.12 Endorsement by clerk of court in case name is changed.

Whenever the name of a petitioner, whose petition for naturalization was filed prior to October 1, 1991, has been changed by order of a court as part of a

naturalization, the clerk of court or his or her authorized deputy shall make the following endorsement on the front of the original and duplicate certificate of naturalization: "Name changed by decree of court from _____, as part of the naturalization." inserting in full the original name of the petitioner. * * *

* * * * *

87. Section 338.13 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 338.13 Spoiled certificate.

* * * This section applies to certificates prepared by the clerk of court pursuant to § 338.11.

PART 339—FUNCTIONS AND DUTIES OF CLERKS OF COURT REGARDING NATURALIZATION PROCEEDINGS

88. The heading of part 339 is revised as set forth above.

89. The authority citation for part 339 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448.

90. Sections 339.1 and 339.2 are revised to read as follows:

§ 339.1 Administration of oath of allegiance to applicants for naturalization.

It shall be the duty of a judge of a court that administers an oath of allegiance to insure that such oath is administered to each applicant for naturalization who has chosen to appear before the court. The clerk of court shall issue to each person to whom such an oath is administered a written notification verifying that such an oath has been administered. The written notification shall include the applicant's correct name, record of any name change, date of the administration of the oath, and the applicant's alien registration number.

§ 339.2 Monthly reports.

(a) *Administration of oath of allegiance.* The clerk of court shall submit to the Service office having administrative jurisdiction over the place in which the court is located, a monthly report of all applicants who have had the oath of allegiance administered by that court. The report shall include each applicant's name, change of name, alien registration number, and date of the administration of the oath. The report shall be submitted within 30 days after the close of the month in which the oath was administered.

(b) *Petitions filed for de novo hearings.* The clerk of court shall submit to the district director having administrative jurisdiction over the place in which the court is located, a monthly report of all persons who have filed *de novo* review petitions before the court. The report shall include each petitioner's name, alien registration number, date of filing of the petition for a *de novo* review, and, once an order has been entered, the disposition.

(c) *Reports relating to petitions filed prior to October 1, 1991.* The clerks of court shall, on the first day of each month, submit to the district director or officer in charge having administrative jurisdiction over the place in which the court is located, a report on Form N–4, in duplicate, listing all certificates of naturalization issued or spoiled pursuant to § 338.11 of this chapter during the preceding month in accordance with the instructions contained in Form N–4. The report shall be accompanied by all duplicates of certificates of naturalization with stubs intact.

91. Section 339.5 is revised to read as follows:

§ 339.5 Recordkeeping.

The maintenance of records and submission of reports under this chapter may be accomplished by either electronic or paper means.

PART 340—REVOCATION OF NATURALIZATION

92. The authority citation for part 340 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443.

93. Section 340.11 is amended by:

a. Adding, in the second sentence, "or she" after "he"; "a" before "revocation"; and removing the "s" at the end of the word "proceedings"; and

b. Adding new text at the end of the paragraph to read as follows:

§ 340.11 Reports.

* * * It shall be the responsibility of the district director to advise the Service office that originated the information upon which the revocation inquiry is based about the progress of the investigation and report the findings of the inquiry as soon as practicable.

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

94. The authority citation for part 343b is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1454, 1455.

95. Part 343b is further amended by:

a. Revising, in § 343b.1, the form number "N–577" to read "N–565"; and

b. Revising, in § 343b.2, the form number "N–577" to read "N–565".

PART 344—[REMOVED]

96. Part 344 is removed.

PART 499—NATIONALITY FORMS

97. The authority citation for part 499 continues to read as follows:

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

98. Section 499.1 is amended by removing the following forms from the listing of forms:

Form No., Title and Description

N–7 (5–5–83)—Quarterly Abstract of Collections of Naturalization Fees.

N–12 (1–30–82)—Penalty Envelope (to be addressed to any office of Service).

N–13 (4–1–81)—Penalty Envelope (Large—to be addressed to any office of Service).

N–305 (5–5–83)—Form Letter Notifying Alien that Form N–300 has been Forwarded to the Clerk of the Court.

N–315 (3–1–80)—Declaration of Intention.

N–400B (1–1–66)—Supplement to Application to File Petition for Naturalization (by a seaman, under section 330 of the Immigration and Nationality Act).

N–402 (4–15–82)—Application to File Petition for Naturalization in Behalf of a Child (under section 322, Immigration and Nationality Act).

N–405 (4–1–82)—Petition for Naturalization (under general provisions of the Immigration and Nationality Act).

N–407 (3–25–82)—Petition for Naturalization (in behalf of a child, under section 322, Immigration and Nationality Act).

N–414 (12–15–44)—Acknowledgement of Filing Petition for Naturalization.

N–414a (7–15–65)—Acknowledgement of Filing Petition for Naturalization and Index Card.

N–577 (5–5–83)—Application for a Special Certificate of Naturalization to Obtain Recognition as a Citizen of the United States by a Foreign State.

99. Section 499.1 is amended by adding, in the proper numerical sequence, the following forms:

§ 499.1 Prescribed forms.

* * * * *

Form No., Title and Description

* * * * *

M–288 (1987)—United States History 1600–1987, Level II.

M–289 (1987)—United States History 1600–1987, Level I.

M–290 (1987)—U.S. Government Structure, Level II.

M–291 (1987)—U.S. Government Structure, Level I.
M–302 (3–16–89)—For The People * * *, U.S. Citizenship Education and Naturalization Information.
M–303 (3–16–89)—By The People * * *, U.S. Government Structure.
M–304 (3–16–89)—Of The People * * *, U.S. History 1600–1988.
* * * * *
N–336 ( )—Request for Hearing on a Decision in Naturalization Proceedings under section 336 of the Act.
* * * * *

101. In section 499.1 references to forms N–400, N–445, and N–565 are revised to read as follows:

§ 499.1 Prescribed forms.
* * * * *

Form No., Title and Description
* * * * *
N–400 (12–5–86)—Application for Naturalization.
* * * * *
N–445 (4–15–82)—Notice to Petitioner to Appear in Court for Final Hearing on Petition for Naturalization, and Questionnaire to be Submitted by Petitioner at the Final Hearing or to Applicant to Appear for Oath Ceremony, and Questionnaire to be Submitted at the Oath Ceremony.
* * * * *
N–565 (5–5–83)—Application to Replace a Naturalization/Citizenship Certificate.
* * * * *

Dated: September 25, 1991.
William P. Barr,
Acting Attorney General.
[FR Doc. 91–23922 Filed 10–4–91; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AWA–3]

Alteration of the St. Louis Terminal Control Area; MO; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the wording of Area D and Area F in the description of the St. Louis Terminal Control Area (TCA) and the section number of the amendment. A minor word change in Area D and Area F was omitted from the published descriptions and this action corrects those omissions. There are no changes to the overall dimensions of the TCA. The section number previously given was § 71.403(b) instead of § 71.401(b).

EFFECTIVE DATE: 0901 u.t.c., November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–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) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On May 1, 1991, the FAA amended part 71 by altering the St. Louis, MO, TCA (56 FR 20096). The primary aim of this modification to the St. Louis TCA is to improve the degree of safety while providing the most efficient use of the terminal airspace. This action improves the flow of traffic and increases safety in the St. Louis terminal area. Nonetheless, the descriptions for Area D and Area F of the TCA have been amended slightly to correct a segment that was inadvertently omitted. The section number previously given for the amendment was 14 CFR 71.403(b), which does not exist. The correct section reference is 14 CFR 71.401(b).

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the May 1, 1991, **Federal Register** on page 20098, in the third column, section number "71,403(b)" is corrected to read "71.401(b)" in both the heading and the amendatory instruction 2, and the wording in the descriptions under Area D and Area F of the St. Louis, MO, TCA, is corrected to read as follows:

§ 71.401(b) [Amended]

2. Section 71.401(b) is amended to read as follows:

St. Louis, MO [Corrected]
* * * * *

Area D [Corrected]

That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the Lambert-St. Louis International Airport, excluding that airspace bounded by the 15-mile arc on the southeast, Interstate 55/70 from the 15-mile arc to the Mississippi River, then southwest along the east bank of the Mississippi River to a point where it intercepts the 15-mile arc.
* * * * *

Area F [Corrected]

That airspace extending upward from 4,500 feet MSL and including 8,000 feet MSL in two areas: (1) to the northwest and within a 20-mile radius arc of the Lambert-St. Louis International Airport the area bounded by the northeast shore of the Illinois River on the north and by Interstate 64 (formerly Highway 40/61) on the south and within 8 miles each side of the Lambert-St. Louis International Airport Runway 12R ILS localizer northwesterly course extending outward from the 20-mile arc to a 30-mile radius arc; and (2) to the southeast and within a 20-mile radius arc of the Lambert-St. Louis International Airport and area bounded by Interstate 270 on the north and on the south by a line drawn between Dupo and Millstadt, Illinois, and within 8 miles each side of the Lambert-St. Louis International Airport Runway 30L ILS localizer southeasterly course extending outward from the 20-mile radius arc to the 30-mile radius arc.
* * * * *

Issued in Washington, DC, on September 26, 1991
Harold W. Becker,
Manager, Airspace-Rules and Aeronautical Information Division.
[FR Doc. 91–23666 Filed 10–4–91; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 26655; Amdt. No. 1462]

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.

EFFECTIVE DATE: 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 advantage 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 September 27, 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 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 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).

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 January 9, 1992

College Station, TX—Easterwood Field, VOR or TACAN RWY 10, Amdt. 18
College Station, TX—Easterwood Field, VOR/DME RWY 28, Amdt. 12
College Station, TX—Easterwood Field, LOC BC RWY 16, Amdt. 4
College Station, TX—Easterwood Field, NDB RWY 34, Amdt. 11
College Station, TX—Easterwood Field, ILS RWY 34, Amdt. 10

. . . Effective November 14, 1991

Newport, AR—Newport Muni, VOR/DME RWY 18, Amdt. 2
Newport, AR—Newport Muni, NDB RWY 36, Amdt. 6
Springfield, IL—Capital, VOR RWY 22, Amdt. 20
Springfield, IL—Capital, NDB RWY 4, Amdt. 18
Springfield, IL—Capital, ILS RWY 4, Amdt. 24
Springfield, IL—Capital, ILS RWY 22, Amdt. 6
Springfield, IL—Capital, RADAR-1, Amdt. 7
Augusta, KS—Augusta Muni, VOR/DME RNAV RWY 36, Orig.
Garden City, KS—Garden City Muni, NDB RWY 35, Orig.

Lake Charles, LA—Chennault Industrial Airpark, RADAR-1, Orig.
Minden, LA—Minden-Webster, VOR/DME-A, Amdt. 4
Minden, LA—Minden-Webster, NDB RWY 1, Amdt. 2
Minden, LA—Minden-Webster, NDB RWY 19, Amdt. 2
Majuro ATOLL, RM—Marshall Islands Intl, NDB/DME RWY 7, Orig., CANCELLED
Majuro ATOLL, RM—Marshall Islands Intl, NDB RWY 25, Amdt. 3, CANCELLED
Majuro ATOLL, RM—Marshall Islands Intl, NDB RWY 7, Orig.
Majuro ATOLL, RM—Marshall Islands Intl, NDB RWY 25, Orig.
Jackson, MN—Jackson Muni, NDB RWY 13, Amdt. 7
Pipestone, MN—Pipestone Muni, NDB RWY 36, Amdt. 5
Dexter, MO—Dexter Muni, VOR/DME RWY 36, Amdt. 4
Mexico, MO—Mexico Memorial, VOR/DME-A, Amdt. 5, CANCELLED
Mexico, MO—Mexico Memorial, VOR/DME RWY 24, Orig.
Las Vegas, NV—McCarran Intl, VOR RWY 25R, Amdt. 12, CANCELLED
Manville, NJ—Kupper, VOR-A, Amdt. 5
Johnstown, NY—Fulton County, NDB RWY 10, Orig.
Johnstown, NY—Fulton County, NDB RWY 28, Orig.
Circleville, OH—Pickaway County Memorial, VOR RWY 19, Amdt. 2
Circleville, OH—Pickaway County Memorial, NDB RWY 19, Amdt. 5
Ardmore, OK—Ardmore Downtown Executive, VOR-A, Amdt. 12
Ardmore, OK—Ardmore Downtown Executive, NDB RWY 35, Amdt. 4
Ardmore, OK—Ardmore Downtown Executive, VOR/DME RNAV RWY 17, Amdt. 4
Ardmore, OK—Ardmore Downtown Executive, VOR/DME RNAV RWY 35, Amdt. 4
Chambersburg, PA—Chambersburg Muni, RNAV RWY 6, Orig., CANCELLED
Chambersburg, PA—Chambersburg Muni, RNAV RWY 24, Orig., CANCELLED
East Stroudsburg, PA—Birchwood-Pocono Airpark, VOR/DME RWY 31, Amdt. 2
East Stroudsburg, PA—Stroudsburg-Pocono, VOR/DME-A, Amdt. 5
Lancaster, PA—Lancaster, VOR RWY 31, Amdt. 15
Lancaster, PA—Lancaster, VOR/DME RWY 31, Amdt. 3
Meadville, PA—Port Meadville, VOR RWY 7, Amdt. 6
Meadville, PA—Port Meadville, LOC RWY 25, Amdt. 3
Pottsville, PA—Schuylkill County/Joe Zerbey/, VOR/DME RNAV RWY 29, Amdt. 3
Hamilton, TX—Hamilton Muni, NDB RWY 36, Orig.
Houston, TX—Ellington Field, VOR RWY 22, Amdt. 1
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 4, Amdt. 2
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 17R, Amdt. 2
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 22, Amdt. 2
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 35L, Amdt. 2
Houston, TX—Ellington Field, ILS RWY 17R, Amdt. 2
Houston, TX—Ellington Field, ILS RWY 35L, Amdt. 2
Laredo, TX—Laredo Intl, VOR/DME or TACAN RWY 14, Amdt. 8
Laredo, TX—Laredo Intl, VOR or TACAN RWY 32, Amdt. 8
Laredo, TX—Laredo Intl, NDB RWY 17L, Amdt. 2
Laredo, TX—Laredo Intl, NDB RWY 17R, Amdt. 9
Laredo, TX—Laredo Intl, ILS RWY 17R, Amdt. 8
Lubbock, TX—Lubbock Intl, LOC BC RWY 35L, Amdt. 17
Mc Gregor, TX—Mc Gregor Muni, VOR RWY 17, Amdt. 7
Seattle, WA—Seattle-Tacoma Intl, NDB RWY 34R, Amdt. 6
Charleston, WV—Yeager, ILS RWY 5, Amdt. 4
Martinsburg, WV—Eastern WV Regional/Shepherd, VOR-A, Amdt. 8
Petersburg, WV—Grant County, VOR/DME-A, Amdt. 1
Ravenswood, WV—Jackson County, VOR/DME RWY 3, Amdt. 2

. . . *Effective October 17, 1991*

Elkhart, IN—Elkhart Muni, ILS RWY 27, Orig.
New York, NY—La Guardia, ILS RWY 4, Amdt. 34

. . . *Effective September 13, 1991*

Covington/Cincinnati, OH, KY—Cincinnati/Northern Kentucky Intl, NDB RWY 9, Amdt. 10
Covington/Cincinnati, OH, KY—Cincinnati/Northern Kentucky Intl, ILS RWY 9, Amdt. 12
Covington/Cincinnati, OH, KY—Cincinnati/Northern Kentucky Intl, ILS RWY 27, Amdt. 12

[FR Doc. 91-24050 Filed 10-4-91; 8:45 am]
BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1216

Environmental Quality

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1216, "Environmental Quality," by revising subparts 1216.2 and 1216.3 to reflect the current organizational titles of certain NASA officials and by updating the formal designations of certain outside agencies. None of the changes reflect substantive or procedural changes in the manner in which the Agency executes its environmental responsibilities. Subpart 1216.2 prescribes procedures for floodplain and wetlands management; and Subpart 1216.3 sets forth NASA procedures for implementing provisions of the National Environmental Policy of 1969, as amended (42 U.S.C. 4321 *et seq.*).

EFFECTIVE DATE: October 7, 1991.

ADDRESSES: Facilities Engineering Office, Code NX, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Kenneth Kumor, (202) 453-1956.

SUPPLEMENTARY INFORMATION: NASA organizational titles are being corrected in the following sections: 1216.202, 1216.204, 1216.205, 1216.303, and 1216.309. Since these changes are internal and administrative in nature and do not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

3. This rule is not a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 14 CFR Part 1216

Environmental impact statements, Floodplains, Wetlands.

PART 1216—ENVIRONMENTAL QUALITY

For reasons set out in the Preamble, 14 CFR part 1216 is amended as follows:

1. The authority citation for 14 CFR part 1216 subparts 1216.1 and 1216.3 continues to read as follows:

Authority: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 *et seq.*); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); sec. 309 the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514 (March 5, 1970, as amended by E.O. 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (40 CFR part 1500–1508); and E.O. 12114, Jan. 4, 1979 (44 FR 1957).

2. The authority citation for 14 CFR part 1216 subpart 1216.2 continues to read as follows:

Authority: E.O. 11988 and E.O. 11990, as amended; 42 U.S.C. 2473(c)(1).

3. Section 1216.202 is amended by revising paragraph (b) to read as follows:

§ 1216.202 Responsibility of NASA officials.

* * * * *

(b) The Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, is responsible for overall coordination of floodplain and wetlands management activities, and for conducting periodic on-site reviews of each Installation's floodplain and wetlands management activities, and for conducting periodic on-site reviews of each Installation's floodplain and wetlands management activities to assure compliance with the Executive orders.

4. Section 1216.204 is amended by revising paragraphs (a), (e)(1), (e)(2), and (f) to read as follows:

§ 1216.204 General implementation requirements.

(a) Each NASA Field Installation shall prepare, if not already available, an Installation base floodplain map based on the latest information and advice of the appropriate District Engineer, Corps of Engineers, or, as appropriate, the Director of the Federal Emergency Management Agency. The map shall delineate the limits of both the 100-year and 500-year floodplains. A copy of the map, approved by the Field Installation Director, will be provided to the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, by February 28, 1979. The map will conform to the definitions and requirements specified in the Floodplain Management Guidelines for Implementing Executive Order 11988.

* * * * *

(e) * * *

(1) Consult with the appropriate local office of the Corps of Engineers or Federal Emergency Management Agency and/or U.S. Fish and Wildlife Service, as applicable, on a regular basis throughout the facility design or action planning phase. Documentation of this consultation will be recorded in the Field Installation's project file.

(2) Submit evidence of the successful completion of this consultation to the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, prior to the start of project construction.

(f) If NASA property used or visited by the general public is located in an identified flood hazard area, the Installation shall provide on structures, in this area and other places where appropriate (such as where roads enter the flood hazard area), conspicuous delineation of the 100-year and 500-year flood levels, flood of record, and probable flood height in order to enhance public awareness of flood hazards. In addition, Field Installations shall review their storm control and disaster plans to assure that adequate provision is made to warn and evacuate the general public as well as employees. These plans will include the integration of adequate warning time into such plans. The results of this review shall be submitted to the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, by February 28, 1979.

* * * * *

5. Section 1216.205 is amended by revising paragraphs (b)(1), (b)(2), (b)(6), and (b)(9) to read as follows:

§ 1216.205 Procedures for evaluating NASA actions impacting floodplains and wetlands.

* * * * *

(b) * * *

(1) Early public notice is the next step in the evaluation process and will normally be accomplished using only the appropriate Single State Point of Contact and coordinating with that party pursuant to Executive Order (E.O.) 12372, as amended, "Intergovernmental Review of Federal Programs," as appropriate. If, however, actions involving land acquisition or a major change in land or water use is proposed, the overall public audience will be as broad as reasonably possible including, but not limited to, adjacent property owners and residents, near-by floodplain residents and local elected officials. To assure their continuous interaction and involvement, the Field Installation will issue public notices and newsletters, and hold public hearing and/or work shops on a formalized scheduled basis to provide the opportunity for public input and understanding of the proposed action. Regardless of the scope of action proposed, initially a notice will be provided to the appropriate State Single Point of Contact pursuant to E.O. 12372 that will not exceed three pages and will include:

(i) A location map of the proposed action.

(ii) The reasons why the action is proposed to be located in a floodplain.

(iii) A statement indicating whether the action conforms to applicable state and local floodplain protection standards.

(iv) A list of any NASA identified alternatives to be considered.

(v) A statement explaining the timing of public notice review actions to provide opportunities for the public to provide meaningful input.

(2) Working with the appropriate State Single Point of Contact pursuant to E.O. 12372 and, if applicable, other public groups and officials, to identify practicable alternatives in addition to those already identified by NASA. The alternatives will include:

(i) Carrying out the proposed action at a location outside the base floodplain (alternative sites).

(ii) Other means which accomplish the same purpose as the proposed action (alternative actions).

(iii) Taking no action, if the resulting hazards and/or harm to or within the floodplain overbalances the benefits to be provided by the proposed action.

* * * * *

(6) If, upon completing the comparative evaluation, the Field Installation Director determines that the only practicable alternative is locating in the base floodplain, a statement of fundings and public explanation must be provided to all those who have received the early public notice, and specifically to the appropriate State Single Point of Contact pursuant to E.O. 12372, and will include as a minimum:

(i) The reasons why the proposed action must be located in the floodplain.

(ii) A statement of all significant facts considered in making the determination including alternative sites and actions.

(iii) A statement indicating whether the actions conform to applicable State

and local floodplain protection standards.

(iv) In cases where land acquisition or major changes in land use are involved, it may also be appropriate to include:

(A) A provision for publication in the **Federal Register** or other appropriate vehicle.

(B) A description of how the activity will be designed or modified to minimize harm to or within the floodplain.

(C) A statement indicating how the action affects natural or beneficial floodplain or wetlands values.

(D) A statement listing other involved agencies and individuals.

* * * * *

(9) In accordance with § 1216.202(b), the Assistant Associate Administrator for Facilities Engineering, NASA Headquarters, will conduct periodic on-site reviews to assure that the action is carried out in accordance with the stated findings and plans for the proposed action, in compliance with the Executive orders.

6. Section 1216.303 is amended by revising paragraph (c) to read as follows:

§ 1216.303 Responsibilities of NASA officials.

* * * * *

(c) The Assistant Administrator for Legislative Affairs is responsible for ensuring that the legislative environmental impact statements accompany NASA recommendations or reports on proposals for legislation submitted to Congress. The Associate Administrator for Management, the Chief Financial Officer (CFO)/ Comptroller and the General Counsel will provide guidance as required.

7. Section 1217.309 is amended by revising paragraph (a) to read as follows:

§ 1216.309 Public involvement.

(a) Interested persons can get information on NASA environmental impact statements and other aspects of NASA's NEPA process by contacting the Assistant Associate Administrator for Facilities Engineering, Code NX, NASA Headquarters, Washington, DC 20546, 202–453–1965. Pertinent information regarding any aspect of the NEPA process may also be mailed to the above address.

* * * * *

Dated: September 26, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91–23814 Filed 10–4–91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 26655; Amdt. No. 1462]

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 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 Date: 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 matter 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 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, US 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 on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). 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 of 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.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change consideration, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for 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 chart changes to SIAPs

by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

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. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). 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 these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulation 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; 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 September 27, 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 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 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).

2. Part 97 is amended to read as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
09/09/91	ND	Williston	Sloulin Fld Intl	FDC 1/4270	ILS RWY 29 AMDT 3. This Corrects TL 91-20.15.
09/12/91	AZ	Casa Grande	Casa Grande Muni	FDC 1/4340	ILS/DME RWY 5 AMDT 4.
09/12/91	AZ	Parker	Avi Suquilla	FDC 1/4334	VOR/DME-A AMDT 2.
09/12/91	CA	Crescent City	Jack McNamara Field	FDC 1/4342	VOR/DME RWY 11 AMDT 10.
09/12/91	CA	Crescent City	Jack McNamara Field	FDC 1/4344	VOR/DME RWY 35 AMDT 9.
09/12/91	CA	El Monte	El Monte	FDC 1/4333	VOR-A AMDT 5.
09/12/91	CO	Grand Junction	Walker Field	FDC 1/4366	ILS RWY 11 AMDT 13.
09/12/91	MT	Havre	Havre City/County	FDC 1/4368	VOR RWY 25 AMDT 8.
09/12/91	WA	Olympia	Olympia	FDC 1/4343	VOR RWY 17 AMDT 10.
09/13/91	MI	Iron Mountain/Kingsford	Ford	FDC 1/4375	LOC DME BC RWY 19 AMDT 11.
09/13/91	NE	Ord	Evelyn Sharp Field	FDC 1/4386	NDB RWY 13 AMDT 2.
09/13/91	SD	Sioux Falls	Joe Foss Field	FDC 1/4377	VOR/DME OR TACAN RWY 33 ANDT 9.
09/13/91	SD	Sioux Falls	Joe Foss Field	FDC 1/4378	VOR OR TACAN RWY 15 AMDT 18.
09/16/91	MI	Eaton Rapids	Skyway Estates	FDC 1/4405	VOR-A ORIG.
09/17/91	MI	Detroit	Detroit Metropolitan Wayne County	FDC 1/4441	RADAR-1 AMDT 21.
09/17/91	MI	Detroit	Detroit Metropolitan Wayne County	FDC 1/4443	VOR RWY 21R AMDT 1.
09/17/91	MI	Detroit	Detroit Metropolitan Wayne County	FDC 1/4444	ILS RWY 21R AMDT 25.
09/18/91	CT	Windsor Locks	Bradley Intl	FDC 1/4476	VOR/DME RWY 6 ORIG.
09/19/91	IA	Mason City	Mason City Muni	FDC 1/4520	ILS RWY 35 AMDT 5.
09/19/91	IA	Mason City	Mason City Muni	FDC 1/4523	VOR/DME RWY 17 AMDT 3.
09/19/91	IA	Mason City	Mason City Muni	FDC 1/4524	LOC/DME BC RWY 17 AMDT 5.
09/19/91	IA	Mason City	Mason City Muni	FDC 1/4527	VOR RWY 35 AMDT 5.
09/20/91	IA	Forest City	Forest City Muni	FDC 1/4551	NDB RWY 33 ORIG. *This amends TL91-20.*
09/20/91	MI	Fremont	Fremont Muni	FDC 1/4535	VOR-A AMDT 10.
09/20/91	MI	Fremont	Fremont Muni	FDC 1/4536	VOR RWY 36 AMDT 6.
09/20/91	PA	Washington	Washington County	FDC 1/4533	VOR-B AMDT 6.
09/23/91	CA	La Verne	Brackett Field	FDC 1/4575	VOR-A AMDT 5.
09/23/91	MO	Malden	Malden Muni	FDC 1/4585	VOR RWY 31 AMDT 7.
09/23/91	MO	Perryville	Perryville Muni	FDC 1/4590	VOR/DME-A AMDT 3.
09/23/91	MO	Trenton	Trenton Muni	FDC 1/4584	NDB RWY 36 AMDT 8.
09/23/91	MO	Trenton	Trenton Muni	FDC 1/4588	NDB RWY 18 AMDT 6.
09/23/91	MT	Billings	Billings Logan Intl	FDC 1/4586	NDB RWY 9L AMDT 18.
09/23/91	MT	Billings	Billings Logan Intl	FDC 1/4587	ILS RWY 9L AMDT 23.
09/23/91	OH	Elyria	Elyria	FDC 1/4578	VOR-A AMDT 7.
09/23/91	RI	Providence	Theodore Francis Green State	FDC 1/4576	ILS RWY 5R AMDT 14.
09/23/91	WV	Beckley	Raleigh County Memorial	FDC 1/4574	VOR RWY 19 AMDT 2.

NFDC TRANSMITTAL LETTER—Continued

Effective	State	City	Airport	FDC No.	SIAP
09/24/91	ID	Pocatello	Pocatello Regional	FDC 1/4624	ILS RWY 21 AMDT 24.
09/24/91	MN	Marshall	Marshall Muni-Ryan Field	FDC 1/4606	VOR/DME RWY 30, AMDT 1.
09/24/91	NY	New York	La Guardia	FDC 1/4629	ILS RWY 4 AMDT 33.
09/24/91	WA	Hoquiam	Bowerman	FDC 1/4619	VOR RWY 6 AMDT 12.
09/24/91	WA	Hoquiam	Bowerman	FDC 1/4620	LOC RWY 24 AMDT 2.
09/24/91	WA	Hoquiam	Bowerman	FDC 1/4621	VOR/DME RWY 24 AMDT 3.

NFDC Transmittal Letter Attachment

Parker

AVI SUQUILLA
Arizona
VOR/DME–A AMDT 2...
Effective: 09/12/91

FDC 1/4334/P20/ FI/P AVI SUQUILLA, PARKER, AZ. VOR/DME–A AMDT 2...CIRCLING MDA 1720/HAA 1271 CATS A, B, C. BLYTHE, CA ALSTG MINS... CIRCLING MDA 1900/HAA 145A CATS A, B, C. THIS IS VOR/DME–A AMDT 2A.

Casa Grande

CASA GRANDE MUNI
Arizona
ILS/DME RWY 5 AMDT 4...
Effective: 09/12/91

FDC 1/4340/CGZ/ FI/P CASA GRANDE MUNI, CASA GRANDE, AZ. ILS/DME RWY 5 AMDT 4...ADD NOTE... GS UNUSABLE BELOW 1665. DELETE NOTE... ACTIVATE MALSR RWY 5 CTAF. THIS IS ILS/DME RWY 5 AMDT 4A.

El Monte

EL MONTE
California
VOR–A AMDT 5...
Effective: 09/12/91

FDC 1/4333/EMT/ FI/P EL MONTE, EL MONTE, CA. VOR–A AMDT 5...MSA SECTOR POM R–190 CW TO POM R–280 CHANGE ALT TO 7700 VICE 7200. THIS BECOMES VOR–A AMDT 5A.

Crescent City

JACK MC NAMARA FIELD
California
VOR/DME RWY 11 AMDT 10...
Effective: 09/12/91

FDC 1/4342/CEC/ FI/P JACK MC NAMARA FIELD, CRESCENT CITY, CA. VOR/DME RWY 11 AMDT 10...DELETE NOTES... WHEN CONTROL ZONE NOT IN EFFECT ALTERNATE MINS NA. ACTIVATE MALSR RWY 11—123.6. THIS BECOMES VOR/DME RWY 11 AMDT 10A.

Crescent City

JACK MC NAMARA FIELD
California
VOR/DME RWY 35 AMDT 9...
Effective: 09/12/91

FDC 1/4344/CEC/ FI/P JACK MC NAMARA FIELD, CRESCENT CITY, CA. VOR/DME RWY 35 AMDT 9...DELETE NOTES... WHEN CONTROL ZONE NOT IN EFFECT ALTERNATE MINS NA. ACTIVATE MALSR RWY 11—123.6. THIS BECOMES VOR/DME RWY 35 AMDT 9A.

La Verne

BRACKETT FIELD
California
VOR–A AMDT 5...
Effective: 09/23/91

FDC 1/4575/POC/ FI/P BRACKETT FIELD, LA VERNE, CA. VOR–A AMDT 5...MSA SECTOR POM R–190 CW TO POM R–280 CHANGE ALT TO 7700 FT VICE 7200 FT. THIS BECOMES VOR–A AMDT 5A.

Grand Junction

WALKER FIELD
Colorado
ILS RWY 11 AMDT 13...
Effective: 09/12/91

FDC 1/4366/GJT/ FI/P WALKER FIELD, GRAND JUNCTION, CO. ILS RWY 11 AMDT 13...CHANGE MISSED APCH TO READ... CLIMB RWY HEADING TO 6400 THEN CLIMBING RIGHT TURN TO 10000 DIRECT TO JNC VORTAC AND HOLD. THIS BECOMES ILS RWY 11 AMDT 13A.

Windsor Locks

BRADLEY INTL
Connecticut
VOR/DME RWY 6 ORIG...
Effective: 09/18/91

FDC 1/4476/BDL/ FI/P BRADLEY INTL, WINDSOR LOCKS, CT. VOR/DME RWY 6 ORIG... CIRCLING CAT D MDA 1020, VIS 2¾ MILES, HAA 846. ALT MINS... STANDARD CATS A, B, C. CAT D 900 2¾. THIS BECOMES VOR/DME RWY 6 ORIG A.14

Mason City

MASON CITY MUNI
Iowa
ILS RWY 35 AMDT 5...
Effective: 09/19/91

FDC 1/4520/MCW/ FI/P MASON CITY MUNI, MASON CITY, IA. ILS RWY 35 AMDT 5...TERMINAL ROUTE IS R–075 MCW VORTAC CW (IAF) TO I–MCW LOC (NOPT) VIA THE 9 DME ARC (MCW LR–161) 3000. ADD TERMINAL ROUTE 9 DME ARC TO MYSIN LOM VIA THE 355/6.5 (I–MCW) 2900. THIS IS ILS RWY 35 AMDT 5A.

Mason City

MASON CITY MUNI
Iowa
VOR/DMA RWY 17 AMDT 3...
Effective: 09/19/91

FDC 1/4523/MCW/ FI/P MASON CITY MUNI, MASON CITY, IA. VOR/DME RWY 17 AMDT 3...TERMINAL ROUTE FROM 4–075 MCW VORTAC CCW (IAF) TO R–356 MCW VORTAC (NOPT) VIA THE 15 DME ARC IS NOW 3000. THIS IS VOR/DME RWY 17 AMDT 3A.

Mason City

MASON CITY MUNI
Iowa
LOC/DME BC RWY 17 AMDT 5...
Effective: 09/19/91

FDC 1/4524/MCW/ FI/P MASON CITY MUNI, MASON CITY, IA. LOC/DME BC RWY 17 AMDT 5...TERMINAL ROUTE FROM R–075 MCW VORTAC CCW (IAF) TO I–MCW LOC (NOPT) VIA THE 15 DME ARC (MCW LR–002) IS NOW 3000. THIS IS LOC/DME BC RWY 17 AMDT 5A.

Mason City

MASON CITY MUNI
Iowa
VOR RWY 35 AMDT 5...
Effective: 09/19/91

FDC 1/4527/MCW/ FI/P MASON CITY MUNI, MASON CITY, IA. VOR RWY 35 AMDT 5...TERMINAL ROUTE FROM R–075 MCW VORTAC CW (IAF) TO R–176 MCW VORTACT (NOPT) VIA THE 7 DME ARC IS NOW 3000. THIS IS VOR RWY 35 AMDT 5A.

Forest City

FOREST CITY MUNI
Iowa
VDB RWY 33 ORIG...
Effective: 09/20/91

THIS AMENDS TL91–20.

FDC 1/4551/FXY/ FI/P FOREST CITY MUNI, FOREST CITY, IA. NDB RWY 33 ORIG...MSA FROM FOREST CITY NDB 3000. DELETE 'ACTIVATE MIRL RWYS 15–33 AND 9–27, VASI AND REIL—122.8.' S–33 MDA 1880, HAT 674 ALL CATS, VIS CAT C 2, CAT D 2¼. CIRCLING CAT A, B AND C MDA 1880, HAA 650, VIS CAT C 2.

Pocatello

POCATELLO REGIONAL
Idaho
ILS RWY 21 AMDT 24...
Effective: 09/24/91

FDC 1/4624/PIH FI/P POCATELLO REGIONAL, POCATELLO, ID. ILS RWY 21 AMDT 24...TERMINAL ROUTE IDA VOR/DME TO TYHEE LOM... CHANGE COURSE TO IDA R–191 AND I–PIH NORTHEAST COURSE. DELETE NOTE... ACTIVATE MALSR RWY 21 AND ODALS RWY 3—CTAF. THIS BECOMES ILS RWY 21 AMDT 24A.

Iron Mountain/Kingsford

FORD
Michigan
LOC DME BC RWY 19 AMDT 11 . . .
Effective: 09/13/91

FDC 1/4375/IMT/ FI/P FORD, IRON MOUNTAIN/KINGSFORD, MI. LOC DME BC RWY 19 AMDT 11 . . . MISSED APPROACH . . . CLIMB TO 3300 VIA SOUTH CRS OF IMT LOC TO IMT 10 DME THEN LEFT TURN TO INTERCEPT THE IMT R–185 TO CRAZE INT AND HOLD. THIS IS LOC/DME BC RWY 19 AMDT 11A.

Eaton Rapids

SKYWAY ESTATES
Michigan
VOR–A ORIG . . .
Effective: 09/16/91

FDC 1/4405/60G/ FI/P SKYWAY ESTATES, EATON RAPIDS, MI. VOR–A ORIG . . . MIN ALT PROC TURN 2500, MIN ALT FAF (LAN VORTAC) 2500. DELETE NOTE . . . "PROCEDURE NOT AUTHORIZED AT NIGHT." THIS IS VOR–A ORIG A.

Detroit

DETROIT METROPOLITAN WAYNE COUNTY
Michigan
RADAR-1 AMDT 21 . . .
Effective: 09/17/91

FDC 1/4441/DTW/ FI/P DETROIT METROPOLITAN WAYNE COUNTY, DETROIT, MI. RADAR-1 AMDT 21 . . . S–21R VIS CAT A/B RVR 5000, CAT C RVR 6000, CAT D 1 1/2. S–21R INOPERATIVE TABLE DOES NOT APPLY. THIS IS RADAR-1 AMDT 21A.

Detroit

DETROIT METROPOLITAN WAYNE COUNTY
Michigan
VOR RWY 21R AMDT 21 . . .
Effective: 09/17/91

FDC 1/4443/DTW/ FI/P DETROIT METROPOLITAN WAYNE COUNTY, DETROIT MI. VOR RWY 21R AMDT 1 . . . S–21R VIS CAT A/B RVR 5000, CAT C RVR 6000, CAT D 1 1/2. INOPERATIVE TABLE DOES NOT APPLY. THIS IS VOR RWY 21R AMDT 1A.

Detroit

DETROIT METROPOLITAN WAYNE COUNTY
Michigan
ILS RWY 21R AMDT 25 . . .
Effective: 09/17/91

FDC 1/4444/DTW/ FI/P DETROIT METROPOLITAN WAYNE COUNTY, DETROIT, MI. ILS RWY 21R AMDT 25 . . . S–ILS 21R DH 887/HAT 250 VIS RVR 5000 ALL CATS. S–LOC 214 VIS CATS A/B RVR 5000, CAT C RVR 6000, CAT D 1 1/2. INOPERATIVE TABLE DOES NOT APPLY. THIS IS ILS RWY 21R AMDT 25A.

Fremont

FREMONT MUNI
Michigan
VOR–A AMDT 10 . . .
Effective: 09/20/91

FDC 1/4535/3FM/ FI/P FREMONT MUNI, FREMONT, MI. VOR–A AMDT 10 . . . CIRCLING MDA 1280/HAA 508 CATSA/B/C, MDA 1400/HAA 628 CAT D; VIS CAT A/B 1, CAT C 1 1/2, CAT D 2, MUSKEGON ALTIMETER SETTING MINIMUMS . . . CIRCLING MDA 1360/HAA 588 CATS A/B/C, MDA 1480/HAA 708 CAT D; VIS CAT A/B 1, CAT C 1 1/2, CAT D 2 1/4, DELETE NOTE . . . "USE MUSKEGON ALTIMETER SETTING". ADD NOTE . . . "OBTAIN LOCAL ALTIMETER SETTING ON CTAF. WHEN NOT RECEIVED USE MUSKEGON ALTIMETER SETTING." THIS IS VOR–A AMDT 10A.

Fremont

FREMONT MUNI
Michigan
VOR RWY 36 AMDT 6 . . .
Effective: 09/20/91

FDC 1/4536/3FM/ FI/P FREMONT MUNI, FREMONT, MI. VOR RWY 36 AMDT 6 . . . S–36 . . . MDA 1200/HAT 432 ALL CATS. VIS CAT A/B 1, CAT C 1 1/4, CAT D 1 1/2. CIRCLING MDA 1280/HAA 508 CATS A/B/C, MDA 1400/HAA 628 CAT D; VIS CAT A/B 1, CAT C 1 1/2, CAT D 2, MUSKEGON ALTIMETER SETTING MINIMUMS . . . S–36 MDA 1280/HAT 512 ALL CATS; VIS CAT A/B 1, CAT C 1 1/2. CAT D 1 3/4. CIRCLING MDA 1360/HAA 588 CAT A/B/C, MDA 1480/HAA 708 CAT D; VIS CAT A/B 1, CAT C 1 1/2, CAT D 2 1/4, DELETE NOTE . . . "USE MUSKEGON ALTIMETER SETTING". ADD NOTE . . . "OBTAIN LOCAL ALTIMETER SETTING ON CTAF. WHEN NOT RECEIVED USE MUSKEGON ALTIMETER SETTING." THIS IS VOR RWY 36 AMDT 6A.

Marshall

MARSHALL MUNI-RYAN FIELD
Minnesota
VOR/DME RWY 30, AMDT 1 . . .
Effective: 09/24/91

FDC 1/4606/MML/ FI/P MARSHALL MUNI-RYAN FIELD, MARSHALL, MN. VOR/DME RWY 30, AMDT 1 . . . MIMIMUMS . . . S–30 CATS A/B MDA 1740/HAT 562; CAT C MDA 1740/HAT 562, VIS 1½; CAT D MDA 1740/HAT 562, VIS 1¾ CIRCLING . . . CATS A/B MDA 1740/HAA 561; CAT C MDA 1740/HAA 561; CAT D MDA 1740/HAA 561. REDWOOD FALLS ALTIMETER SETTING MINIMUMS . . . S–30 CATS A/B MDA 1880/HAT 702; CAT C MDA 1880/HAT 702, VIS 2; CAT D MDA 1880/HAT 702, VIS 2¼. CIRCLING CATS A/B MDA 1880/HAA 701, CAT C MDA 1880/HAA 701, VIS 2; CAT D MDA 1880/HAA 701, VIS 2¼. DELETE VISUAL DESCENT POINT. THIS IS VOR/DME RWY 30 AMDT 1A.

Trenton

TRENTON MUNI
Missouri
NDB RWY 36 AMDT 8 . . .
Effective: 09/23/91

FDC 1/4584/TRX/ FI/P TRENTON MUNI, TRENTON, MO. NDB RWY 36 AMDT 8 . . . MSA FROM TRX NDB 3000. THIS BECOMES NDB RWY 36 AMDT 8A.

Malden

MALDEN MUNI
Missouri
VOR RWY 31 AMDT 7 . . .
Effective: 09/23/91

FDC 1/4585/MAW/ FI/P MALDEN MUNI, MALDEN, MO. VOR RWY 31 AMDT 7 . . . MSA FROM MAW VORTAC 2300. THIS BECOMES VOR RWY 31 AMDT 7A.

Trenton

TRENTON MUNI
Missouri
NDB RWY 18 AMDT 6 . . .
Effective: 09/23/91

FDC 1/4588/TRX/ FI/P TRENTON MUNI, TRENTON, MO. NDB RWY 18 AMDT 6 . . . MSA FROM TRX NDB

3000. THIS BECOMES NDB RWY 18 AMDT 6A.

Perryville

PERRYVILLE MUNI
Missouri
VOR/DME–A AMDT 3 . . .
Effective 09/23/91

FDC 1/4590/K02/ FI/P PERRYVILLE MUNI, PERRYVILLE, MO. VOR/DME–A AMDT 3 . . . MSA FROM FAM VORTAC 3200. THIS BECOMES VOR/DME–A, AMDT 3A

Havre

HAVRE CITY/COUNTY
Montana
VOR RWY 25 AMDT 8 . . .
Effective: 09/12/91

FDC 1/4368/HVR/ FI/P HAVRE CITY/COUNTY, HAVRE, MT. VOR RWY 25 AMDT 8 . . . RHINO FIX MINS CIRCLING CAT C VIS 1 1/2. DELETE . . . ACTIVATE MIRL RWY 03–21 AND VASI RWY 21—CTAF. THIS IS VOR RWY 25 AMDT 8A.

Billings

BILLINGS LOGAN INTL
Montana
NDB RWY 9L, AMDT 18 . . .
Effective: 09/23/91

FDC 1/4586/BIL/ FI/P BILLINGS LOGAN INTL. BILLINGS, MT. NDB RWY 9L, AMDT 18 . . . MISSED APCH CLIMBING LEFT TURN TO 5700 DIRECT SAIGE LOM AND HOLD. HOLD W, RT, 095 INBOUND. THIS IS NDB RWY 9L AMDT 18A.

Billings

BILLINGS LOGAN INTL
Montana
ILS RWY 9L AMDT 23 . . .
Effective: 09/23/91

FDC 1/4587/BIL/ FI/P BILLINGS LOGAN INTL, BILLINGS, MT. ILS RWY 9L AMDT 23 . . . MISSED APCH CLIMBING LEFT TURN TO 5700 DIRECT SAIGE LOM AND HOLD. HOLD W, RT, 095 INBOUND. THIS IS ILS RWY 9L AMDT 23A.

Williston

SLOULIN FLD INTL
North Dakota
ILS RWY 29 AMDT 3...
Effective: 09/09/91
THIS CORRECTS TL 91–20.15

FDC 1/4270/ISN/FI/P SLOULIN FLD INTL, WILLISTON, ND. ILS RWY 29 AMDT 3...MSA SF LOM 4300. THIS IS ILS RWY 29 AMDT 3A.14

Ord

EVELYN SHARP FIELD
Nebraska
NDB RWY 13 AMDT 2...
Effective: 09/13/91

FDC 1/4386/ODX/FI/P EVELYN SHARP FIELD, ORD, NE. NDB RWY 13 AMDT 2...ALT MIN CAT A AND B 900–2, CAT C 900–2 ½, CAT D 900–2 ¾. ALT MINS NA WHEN ORD, NEBRASKA WEATHER NOT RECEIVED. THIS IS NDB RWY 13 AMDT 2A.

New York

LA GUARDIA
New York
ILS RWY 4 AMDT 33...
Effective: 09/24/91

FDC 1/4629/LGA/FI/P LA GUARDIA, NEW YORK, NY. ILS RWY 4 AMDT 33...S–ILS–4 VIS 4000 RVR ALL CATS. THIS BECOMES ILS RWY 4 AMDT 33A.

Elyria

ELYRIA
Ohio
VOR–A AMDT 7...
Effective: 09/23/91

FDC 1/4578/1G1/FI/P ELYRIA, ELYRIA, OH. VOR–A AMDT 7...MINIMUMS... CIRCLING CAT C MDA 1260/HAA 500. CHANGE ALTIMETER SETTING NOTE TO... "USE CLEVELAND HOPKINS INTL ALTIMETER SETTING." THIS IS VOR–A AMDT 7A.

Washington

WASHINGTON COUNTY
Pennsylvania
VOR–B AMDT 6...
Effective: 09/20/91

FDC 1/4533/AFJ/ FI/P WASHINGTON COUNTY, WASHINGTON, PA. VOR–B AMDT 6...CAT D CIRCLING MDA 2080/HAA 895, VIS 3. THIS BECOMES VOR–B AMDT 6A.

Providence

THEODORE FRANCIS GREEN STATE
Rhode Island
ILS RWY 5R AMDT 14...
Effective: 09/23/91

FDC 1/4576/PVD/ FI/P THEODORE FRANCIS GREEN STATE, PROVIDENCE, RI. ILS RWY 5R AMDT 14...CHANGE S–ILS–5R CAT D MIN FROM 2000 RVR to 1800 RVR. THIS IS ILS RWY 5R AMDT 14A.

Sioux Falls

JOE FOSS FIELD
South Dakota
VOR/DME OR TACAN RWY 33 ANDT 9...
Effective 09/13/91

FDC 1/4377/FSD/ FI/P JOE FOSS FIELD, SIOUX FALLS, SD. VOR/DME OR TACAN RWY 33 ANDT 9...ALT MIN CAT E 800–2 ½. DELETE NOTE... AIR CARRIER LANDING VISIBILITY REDUCTION BELOW ¾ MILE FOR LOCAL CONDITIONS NOT AUTHORIZED. THIS IS VOR/DME OR TACAN RWY 33 AMDT 9A.

Sioux Falls

JOE FOSS FIELD
South Dakota
VOR OR TACAN RWY 15 AMDT 18...
Effective 09/13/91

FDC 1/4378/FSD/ FI/P JOE FOSS FIELD, SIOUX FALLS, SD. VOR OR TACAN RWY 15 AMDT 18...ALTN MIN CAT E 800–2 ½. DELETE NOTE... AIR CARRIER LANDING VISIBILITY REDUCTION BELOW ¾ MILE FOR LOCAL CONDITIONS NOT AUTHORIZED. THIS IS VOR OR TACAN RWY 15 AMDDT 18A.

Olympia

OLYMPIA
Washington
VOR RWY 17 AMDT 10...
Effective: 01/12/91

FDC 1/4343/OLM/ FI/P OLYMPIA, OLYMPIA, WA. VOR RWY 17 AMDT 10...S–17 MDA 860/HAT 658 ALL CATS VIS CATS A AND B ¾ CAT C 1 ¼, CAT D 1 ½. CIRCLING CATS A AND B MDA 860/HAA 654 VIS 1 CAT C MDA 860/HAA 654 VIS 1 ¾, CAT D MDA 960/HAA 754 VIS 2 ½. THIS IS VOR RWY 17 AMDT 10A.

Hoquiam

BOWERMAN
Washington
VOR RWY 6 AMDT 12...
Effective 09/24/91

FDC 1/4619/HQM/ FI/P BOWERMAN, HOQUIAM, WA. VOR RWY 6 AMDT 12...ADD NOTE... OBTAIN LCL ALSTG FROM SEATTLE RADIO. IF NOT AVBL, EXCEPT FOR OPERATORS WITH APPROVED WEATHER REPORTING SERVICE, PROC NA. THIS BECOMES VOR RWY 6 AMDT 12A.

Hoquiam

BOWERMAN
Washington
LOC RWY 24 AMDT 2...
Effective 09/24/91

FDC 1/4620/HQM/ FI/P BOWERMAN, HOQUIAM, WA. LOC RWY 24 AMDT 2...ADD NOTE... OBTAIN LCL ALSTG FROM SEATTLE RADIO. IF NOT AVAILABLE, EXCEPT FOR OPERATORS WITH APPROVED WEATHER REPORTING SERVICE, PROC NA. THIS BECOMES LOC RWY 24 AMDT 2A.

Hoquiam

BOWERMAN

Washington
VOR/DME RWY 24 AMDT 3...
Effective 09/24/91

FDC 1/4621/HQM/ FI/P BOWERMAN, HOQUIAM, WA. VOR/DME RWY 24 AMDT 3...ADD NOTE... OBTAIN LCL ALSTG FROM SEATTLE RADIO. IF NOT AVBL, EXCEPT FOR OPERATORS WITH APPROVED WEATHER REPORTING SERVICE, PROC NA. THIS BECOMES VOR/DME RWY 24 AMDT 3A.

Beckley

RALEIGH COUNTY MEMORIAL
West Virginia
VOR RWY 19 AMDT 2...
Effective: 09/23/91

FDC 1/4574/BKW/ FI/P RALEIGH COUNTY MEMORIAL, BECKLEY, WV. VOR RWY 19 AMDT 2...TERMINAL ROUTE BLF VORTAC TO BKW VORTAC ALT 5200. THIS BECOMES VOR RWY 19 AMDT 2A.

[FR Doc. 91-24051 Filed 10-4-91; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

RIN 0596-AB16

Administration; Contributions to the National Wildfire Disaster Commission

AGENCY: Forest Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule establishes the manner of making donations to support the work of the National Commission on Wildfire Disasters, established by the Wildfire Disaster Recovery Act of 1989. The rule is necessary to implement the ten percent limit on contributions established by the Act and to assure that the aggregate amount of contributions from any one person, group, or entity will not exceed ten percent of the total. The intended effects are to ensure that interested contributors receive constructive information on the contribution process and to provide an efficient and consistent process for administering contributions to the Commission.

EFFECTIVE DATE: This rule is effective October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis W. Pendleton, Fire & Aviation Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1511.

SUPPLEMENTARY INFORMATION: The Wildfire Disaster Recovery Act of 1989 (Pub. L. 101-286; 16 U.S.C. 551 note) directed the Secretary of Agriculture to establish a National Commission on Wildfire Disasters, the purpose of which is to review the effect of disaster fires on natural resources and on the financial and cultural aspects of the affected communities and to make findings and develop recommendations concerning the steps necessary for a smooth and timely transition from the loss of natural resources due to such fires.

Section 105 of the Act states that, following the appointment of the members of the Commission and not withstanding the provisions of section 1342 of title 31 of the United States Code, the Secretary of Agriculture may receive on behalf of the Commission, from persons, groups, and entities within the United States, contributions of money and services to assist the Commission in carrying out its duties and functions. Any money contributed under this section shall be made available to the Commission to carry out this Act. The Act established a limitation to assure that the aggregate amount of contributions from any one person, group, or entity shall not exceed ten percent of the total amount of funds that will be contributed to the Commission.

The Commission will be dissolved within 90 days following submission of its final report on December 1, 1991. Due to the short tenure of this Commission and the need to have rules in place to guide contributions to the Commission, it is not practicable to obtain public comment prior to adoption.

This rulemaking establishes uniform administrative rules for receiving and processing contributions to the National Commission on Wildfire Disasters. The purpose is to assure adherence to the statutory limitation on contributions for each person, group, or entity. A review of existing U.S. Department of Agriculture regulations as well as those applicable government-wide has determined that there are no existing rules to adequately guide the ten percent limitation on contributions to the Commission. Accordingly, this rule adds a new § 211.6 to 36 CFR part 211 to guide the contribution process.

Paragraph (a) of § 211.6 sets forth the statutory authority for the rule. Paragraph (b) limits the purpose and scope of the rulemaking to establishing administrative procedures for receiving and processing nonfederal contributions to the Commission. Paragraph (c) provides definitions of "Group", "Person", and "Subsidiary" as those terms are used in § 211.6. Paragraph (d) provides that contributions to the Commission may be made by pledge of cash or services payable to the Forest Service and establishes that such pledges must be received no later than October 15. The Department has adopted the "pledge" mechanism as the only practicable way to ensure that no group, person, or entity contributes more than ten percent of the total contributed in support of the Commission.

If the agency were to accept cash or services, without first receiving pledges, some entities might inadvertently exceed the ten percent limit because the total contributed would not yet be known. Paragraph (e) establishes that the Chief of the Forest Service shall receive and process contributions to the Commission. Once the total amount of pledges is received, the Forest Service will then bill contributors for the amounts to be contributed. This paragraph also provides that pledges in excess of ten percent of the total shall be unobligated and dropped from the record. Finally, paragraph (f) provides that any unobligated funds contributed to the Commission shall be deposited into the Treasury as miscellaneous receipts upon termination of the Commission. This provision is necessary because the agency has no authority to refund donations.

Regulatory Impact

This interim rule has been reviewed under USDA procedure and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Act.

Environmental Impact

This proposed rule governs administrative and financial management, procedures, and, as such,

would not have a 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 lb.3(a)(1)).

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public. Those who wish to donate funds or services to support the work of the Commission may do so by letter and such donation is wholly voluntary.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations, Federal/State cooperation, and National Forest.

Therefore, for the reasons set forth in the preamble, part 211 of title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 continues to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 stat. 628 (16 U.S.C. 551,472).

Subpart A—Cooperation With Private and State Agencies

2. Add a new § 211.6 to read as follows:

§ 211.6 National Commission on Wildfire Disasters.

(a) *Authority.* The Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) authorizes nonfederal contributions to support the work of the National Commission on Wildfire Disasters. The Act limits contributions from any one source to no more than ten percent of the total contributed from all sources. The acceptance of Gifts Act (7 U.S.C. 2269) authorizes the U.S. Department of Agriculture agencies to accept donations of cash to be used in furtherance of official purposes.

(b) *Purpose and Scope.* This rulemaking establishes uniform administrative procedures for receiving and processing nonfederal contributions to the National Commission on Wildfire Disasters.

(c) *Definitions.* For the purposes of this section, the following terms and definitions apply.

Commission means the National Commission on Wildfire Disasters established pursuant to the Wildfire Disaster Recovery Act of 1989.

Group means a partnership, unit, aggregate, corporation, association or other legal entity having an associative or assembled interest in the National Wildfire Disaster Commission.

Person means any individual, partnership, corporation, association, or other business entity which can contribute funding to the National Wildfire Disaster Commission.

Subsidiary means a secondary or subordinate to a company, organization, or entity that controls or owns all or a majority of its shares. For the purpose of this section, any subsidiary of a company, organization, or entity is not eligible to contribute funds to the Commission if the parent company, organization, or entity has contributed to the Commission.

(d) *Manner of Donations.* Contributions to the Commission may be made by pledge and subsequent payment of cash or services payable to USDA Forest Service. Pledges of cash or services contributed in support of the work of the Commission must be received no later than November 1, 1991. For the purpose of this section, any subsidiary of a company, organization, or entity is not eligible to contribute funds to the Commission if the parent company, organization, or entity has contributed to the Commission.

(e) *Acceptance of Donations.* The Chief of the Forest Service shall receive and process contributions in support of the Commission. Pledges shall be accepted and held until after the contribution period ends. The Forest Service shall bill contributors for reimbursement pursuant to their pledges when it is determined that the individual contributions do not exceed ten percent of the total contributions received. Only amounts equal to or less than ten percent of the total will be billed. Any amount pledged in excess of ten percent of the total shall be unobligated and dropped from the records.

(f) *Excess Funds.* Any funds available to the Commission that remain unobligated upon termination of the Commission shall be deposited into the Treasury as miscellaneous receipts.

Dated: September 13, 1991.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 91-24030 Filed 10-4-91; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI-3-1-5185; A-1-FRL-4010-1]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Nitrogen Dioxide Prevention of Significant Deterioration Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions incorporate Prevention of Significant Deterioration (PSD) nitrogen dioxide (NO_2) increments and related requirements. The intended effect of this action is to approve a program to implement the NO_2 increments in the State of Rhode Island in accordance with 40 CFR § 51.166. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective December 6, 1991, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908-5767.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Aloi, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On May 22, 1991, the State of Rhode Island submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a program to implement the NO_2 increments to prevent the significant deterioration of air quality in the State of Rhode Island.

On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act (the Act) to prevent significant deterioration of air quality from emissions of nitrogen oxides (NO_X). These regulations establish the maximum allowable increase in the ambient NO_2 concentration allowed above the baseline concentration in an area. These maximum allowable increases are called "increments." The increments use NO_2 as the numerical measure because NO_2 is the pollutant on which the NAAQS for NO_X were based. In addition, NO_X emissions from stationary sources convert to NO_2 in the atmosphere.

The NO_2 increment program has a three-tiered area classification system which was established by Congress in section 163 of the Act for increments of sulfur dioxide and particulate matter. Congress designated Class I areas (including certain national parks and wilderness areas) as areas of special national concern, where the need to prevent the significant deterioration in air quality is the greatest. Therefore, the increment levels in Class I areas are the most stringent. Class II increments allow for a moderate degree of growth. Class III increments allow for higher levels of industrial growth. There are no Class III areas in the country yet. (Originally, all areas not designated as Class I were designated as Class II, unless the State submitted an area to EPA for redesignation as a Class I or III area.)

The NO_2 increments for the three areas are the following:

Class I: 2.5 ug/m^3 annual arithmetic mean

Class II: 25 ug/m^3 annual arithmetic mean

Class III: 50 ug/m^3 annual arithmetic mean.

Forty CFR 51.166 sets forth the minimum federal requirements for the PSD program. State PSD programs must meet all of these requirements. The effective date of the amendments to 40 CFR 51.166 which incorporate the NO_2 increments was October 17, 1989.

Summary of Rhode Island's SIP Revision

The State submitted formal revisions to the Rhode Island Air Pollution Control Regulation No. 9 entitled "Approval to Construct, Install, Modify or Operate" which became effective in the State on May 20, 1991. Rhode Island made changes to § 9.1 "Definitions" and § 9.15 "Increment Consumption." In its submittal, Rhode Island also made commitments to meet the necessary conditions for approval of the NO_2 increment program as described in EPA's official comments submitted during the public comment period for Rhode Island's proposed regulation. These commitments include referencing the legal authority under State law, establishing a NO_2 emissions inventory, determining NO_2 increment consumption for the transition period, periodically assessing NO_2 increment consumption, and correcting a NO_2 increment violation within 60 days. EPA has prepared a short memorandum dated August 27, 1991 entitled "Technical Support Document—Rhode Island Prevention of Significant Deterioration (PSD) Nitrogen Dioxide (NO_2) Increment Regulations" which includes a detailed analysis of this SIP action.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on December 6, 1991.

Final Action

EPA is approving changes to § 9.1 "Definitions," and § 9.15 "Increment Consumption" of the Rhode Island Air Pollution Control Regulation No. 9 as a revision to the Rhode Island SIP.

EPA has reviewed the revisions of this notice for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. EPA has determined that this action is approvable. While the revisions may not include all of the new PSD requirements, they strengthen the requirements in Rhode Island's existing SIP and conform to all of EPA's current regulations. Furthermore, many of the provisions of the new law do not require state submittals until some time in the future. EPA is currently developing revised federal PSD regulations and Rhode Island will adopt regulations meeting these new requirements and submit them in a separate submittal. EPA has decided to approve these revisions today in order to strengthen the SIP and conform it to existing requirements during this transition period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedure published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 9, 1991.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart 00—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(38) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(38) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on May 22, 1991.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated May 22, 1991 submitting a revision to the Rhode Island State Implementation Plan.

(B) Section 9.1.36 "baseline concentration," section 9.1.39 "increment," section 9.1.40 "major source baseline date," section 9.1.42 "minor source baseline date," section 9.1.43 "net emissions increase," and section 9.15.1(c)(5)—exclusion from NO_2 increments due to SIP-approved temporary increases of emissions, of the Rhode Island Air Pollution Control Regulation No. 9 entitled "Approval to Construct, Install, Modify or Operate," effective in the State on May 20, 1991.

(ii) Additional materials.

(A) Nonregulatory portions of the state submittal.

3. In § 52.2081, table 52.2081 is amended by adding a new citation to entry "No. 9" to read as follows:

§ 52.2081 EPA-approved EPA Rhode Island State regulations.

* * * * *

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/Unapproved sections
*	*	*	*	*	*	*
No. 9	Approval to construct, modify or operate.	5/20/91	10/7/91	[*FR* citation from published date].	(c)(38)	Addition of PSD NO_2 increments.
*	*	*	*	*	*	*

[FR Doc. 91-23549 Filed 10-4-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-4014-7]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 8, 1991, the State of Nebraska submitted revised regulations (adopted December 7, 1990) which contain grammatical changes, deletions, and a revision designed to tighten the existing incinerator regulations. EPA's approval of these regulations would strengthen Nebraska's State Implementation Plan (SIP).

DATES: This action will be effective December 6, 1991, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Nebraska Department of Environmental Control, Air Quality Division, 301 Centennial Mall South, Lincoln, Nebraska 68509; Public Information Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551-7606 (FTS 276-7606).

SUPPLEMENTARY INFORMATION: Chapter 1 "Definitions" contains definitions generally applicable to provisions of the state's regulations. The state deleted the definition of Ringlemann Chart chapter 1, section 068, as this inspection method is no longer current.

Chapter 3 "National Ambient Air Quality Standards" (NAAQS) contains primary and secondary ambient air standards for selected pollutants. The state deleted the word "National" from the chapter 3 title because, in addition to the NAAQS, the state enforces a particulate matter standard which is not an NAAQS.

Chapter 4 "Reporting and Operating Permits for Existing Sources; When Required" contains reporting requirements for affected sources. The state added section 004.02 which requires sources subject to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) to comply with the permitting and reporting requirements of this chapter.

Chapter 7 "Prevention of Significant Deterioration of Air Quality" incorporates by reference the Prevention of Significant Deterioration (PSD) requirements contained in 40 CFR part 52. The state updated its reference to 40 CFR part 52 in section 001 of chapter 7. This reference update effectively incorporates regulations for implementing the revised particulate matter standards; corrections to regulations for implementing the revised particulate matter standards; the "Guideline on Air Quality Models (Revised)" (1986); and Supplement A (1987), guidance on the federal enforceability of emissions controls and limitations of a source, and guidance resulting from the settlement agreement in the Chemical Manufacturer's Association (CMA) v. EPA, D.C. Cir. No. 79-1112 (February 22, 1982).

In chapter 10, "Fuel Burning Equipment; Particulate Emissions Limitations for Existing Sources," section 002 provides a mathematical formula for sources to use to determine what emission limitations apply to them. The state deleted the incorrect unit of hours in the formula.

Chapter 11 "Incinerators; Emission Standards" contains Nebraska's solid waste incinerator air emission regulations. Nebraska tightened the particulate emission limitation by setting an emission standard of 0.10 grains per dry standard cubic foot of exhaust gas (corrected to 12 percent carbon dioxide) for all existing solid waste incinerators in section 002. Nebraska also added a new section, section 005, which requires incinerator operating instructions to be read by the operator and posted at the incinerator site.

In February of 1991, EPA promulgated regulations for new and existing municipal waste combustors (MWC) which have the capacity to combust greater than 250 tons per day (TPD) of municipal solid waste (MSW). At this time, Nebraska has no sources affected

by these rulemakings; however, EPA is required by the 1990 Clean Air Act Amendments to reexamine these regulations by November of 1991. The 1990 Amendments also require EPA to promulgate by November 15, 1992, regulations for: (1) New and existing MWCs which have the capacity to burn less than 250 TPD of MSW, and (2) all medical waste incinerators. All NSPS regulations for incinerators are expected to contain a standard for particulate matter which is at least as stringent as that standard set by Nebraska in this revision.

In Chapter 15, "Open Fires, Prohibited; Exceptions," section 002.07C was amended to provide that the exemption allowing burning of waste wood only extends to that wood which is untreated.

Chapter 16 "Visible Emissions; Prohibited (Exceptions Due to Breakdowns or Scheduled Maintenance: See chapter 20)" was amended by replacing references to the Ringlemann Chart in sections 001, 002.01, and 002.02 with references to opacity. The Ringlemann Chart emission evaluation method is obsolete. Also, a source category exception in section 002.03 was deleted as it was obsolete.

Also included in Nebraska's submission are rule changes which will not be approved in this action. These rule changes include NSPS and NESHAP delegations (this rule revision was addressed in a separate **Federal Register** notice), nitrogen oxide PSD increment adoption (this rule addition was addressed in a separate **Federal Register** notice), and reporting requirements for toxic sources (Section 110 of the Clean Air Act does not require these reporting requirements in the State Implementation Plan).

EPA Action

EPA approves Nebraska's request to revise its SIP with regard to the changes discussed in this **Federal Register** notice.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective December 6, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 6, 1991.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, and Particulate matter.

Dated: September 16, 1991.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart CC, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(39) Plan revisions were submitted by the Governor of Nebraska on March 8, 1991.

(i) Incorporation by reference.

(A) Revisions to Nebraska Department of Environmental Control Title 129—Nebraska Air Pollution Control Rules and Regulations adopted by the Nebraska Environmental Control Council December 7, 1990, effective February 20, 1991. Revisions to the following sections are approved in this action: Chapter 1 (deletion of section 068), chapter 3 (deletion of "National" from the chapter title) chapter 4 (section 004.02), chapter 7 (section 001), chapter 10 (section 002), chapter 11 (section 002 and section 005), chapter 15 (section 002.07C), and chapter 16 (sections 001, 002.01, 002.02, and 002.03.)

[FR Doc. 91–24069 Filed 10–4–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[NJ–2–1–5085; FRL–3996–5]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Plan Concerning Volatile Organic Compound Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is today announcing its approval of a New Jersey request to revise its State Implementation Plan for the attainment and maintenance of national ambient air quality standards for ozone. This revision consists of test methods for determining volatile organic compound emissions from source operations in the State of New Jersey.

EFFECTIVE DATE: This action will be effective December 6, 1991, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Any comments should be addressed to: Constantine Sidamon-Eristoff, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following addresses for inspection during normal business hours.

Environmental Protection Agency,
Region II Office, Air Programs Branch,

26 Federal Plaza, room 1034A, New York, New York 10278.

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Air Pollution Control, 401 East State Street, CN 027, Trenton, New Jersey 08625.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On June 3, 1988, the State of New Jersey submitted to the Environmental Protection Agency (EPA) a request to revise its State Implementation Plan (SIP) to include a revised regulation, New Jersey Administrative Code (N.J.A.C.) 7:27B–3 entitled, "Air Test Method 3—Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations."

The regulation provides test methods for determining the levels of volatile organic compounds (VOC) (referred to in New Jersey regulations as volatile organic substances, or VOS) which are emitted from facilities within New Jersey. It is intended to improve the enforceability of the New Jersey ozone SIP. Inclusion of this revised regulation in the SIP will aid in the determination of the compliance status of affected sources of air pollution with the following New Jersey regulations: N.J.A.C. 7:27–16 "Control and Prohibition of Air Pollution by Volatile Organic Substances," which regulates VOC emissions from stationary sources, N.J.A.C. 7:27–8, "Permits and Certificates," and N.J.A.C. 7:27–17 "Control and Prohibition of Air Pollution by Toxic Substances," which establishes standards for the control and prohibition of air pollution by toxic substances.

Summary of 7:27B–3

The sampling and analytical procedures in N.J.A.C. 7:27B–3 were developed using available technology for measuring VOC emissions. In addition, both EPA and American Society for Testing and Materials (ASTM) testing procedures have been incorporated in the regulation by reference.

The revised regulation, N.J.A.C. 7:27B–3, contains test methods for the following six general VOC emission categories, for which standards are specified in EPA-approved N.J.A.C. 7:27–16.

- *Surface Coating Operations:* Analytical methods are described for analyzing representative samples of surface coating materials to determine their VOC content. The methods prescribed are established ASTM procedures, which are incorporated by reference.
- *Delivery Vessel Leaks:* The regulation describes a pressure/vacuum method for determining the leak tightness of delivery vessels, such as tank trucks used to transport gasoline.
- *Leak Detection Process:* A procedure, including the use of a portable instrument, is established for the purpose of detecting leaks and fugitive VOC emission losses from valves, flanges, pumps, and other points in manufacturing processes.
- *Cutback and Emulsified Asphalts:* A method is established for determining the VOC content of representative samples of cutback or emulsified asphalts. The method, employing distillation and density determination, uses established ASTM procedures, which are incorporated by reference.
- *Process and Transfer Operations:* The regulation includes methods for determining source emissions from process and transfer operations for a single known VOC, a mixture of known VOCs in known proportions, and a mixture of known VOCs in unknown proportions.
- *Petroleum Dry Cleaning Operations:* The regulation includes methods for determining the solvent recovery rate, the solvent content in filtration wastes, and the VOC emissions from petroleum dry cleaning operations.

Section 3.2(c) permits the New Jersey Department of Environmental Protection (DEP) to approve the use of alternate test methods, analytical methods, instrumentation, source test period, or data reporting forms in those instances where the specific provisions cannot be used. EPA can only accept such alternative requirements if these changes are submitted to and approved by EPA. In a letter dated October 15, 1990, DEP committed to submit such alternative requirements for approval by EPA. EPA will process such alternatives using letter notices, a new SIP processing procedure (see 54 FR 2214, 1/19/89) which provides for a quick response.

Finding

EPA has reviewed the State's submittal and believes that it establishes a consistent and technically substantive basis for testing VOCs. The rule provides methods to determine whether the required reductions in VOC emissions are achieved and maintained and it also provides for the accurate measurement of the emission of toxic VOCs. As such, today EPA is approving New Jersey's request to include the provisions of N.J.A.C. 7:27B–3 in its SIP.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from today.

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

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: August 26, 1991.

Constantine Sidamon-Eristoff,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, chapter I, subchapter C, part 52, Code of Federal Regulations is amended as follows:

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

Authority: 42 U.S.C. 7401–7642

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(48) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(48) A revision submitted on June 3, 1988 by the New Jersey Department of Environmental Protection (NJDEP) to revise its implementation plan to include revised testing procedures.

(i) Incorporation by reference: New Jersey Administrative Code 7:27B–3, "Air Test Method 3—Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations," effective 9/8/86.

(ii) Additional material: October 15, 1990 letter from William O'Sullivan, NJDEP to William S. Baker, EPA.

3. The table in § 52.1605 is amended by adding a new entry under title 7, chapter 27B for subchapter 3 in numerical order to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
*	*	*	*
Title 7, Chapter 27B:			
Subchapter 3, "Air Test Method 3—Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations.".	9/8/86	[Insert FR publication date and citation of this document].	Alternative requirements approved by the State pursuant to Section 3.2(c) become applicable only if approved by EPA.
*	*	*	*

[FR Doc. 91–24071 Filed 10–4–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[FRL–4014–3]

New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: This document announces the delegation of authority by EPA to the State of Iowa for the implementation and enforcement of NSPS 40 CFR part 60, subparts QQQ, SSS, and VVV and NESHAPs 40 CFR part 61, subparts L, Y, BB, and FF. This action is in response to the State's request for delegation of authority. The effect of the delegation is to shift the primary responsibility for implementation and enforcement of these standards from EPA to the state of Iowa.

EFFECTIVE DATE: May 22, 1991.

ADDRESSES: All requests, reports, applications, submittals, and such other communications required to be submitted under 40 CFR parts 60 and 61, including notifications required to be submitted under subpart A, for affected facilities or activities in Iowa should be sent to Chief, Air Quality and Solid Waste Protection Bureau, Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all notices required by Subpart A also must be sent to Director, Air and Toxics Division, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley, Air Planning and Development Section, Air Branch, Environmental Protection Agency, Region VII, at the above address or by calling (913) 551–7020 (FTS 276–7020).

SUPPLEMENTARY INFORMATION: Sections 111 and 112 of the Clean Air Act allow the Administrator of the EPA to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR parts 60 and 61. A new process for approving state-delegated programs will be developed because of the CAA Amendments of 1990 but, until a process has been developed, we will continue with this method. EPA retains concurrent authority to implement and enforce the delegated standards. The delegation shifts the primary responsibility for implementation and enforcement of the standards from EPA to the state government.

On August 20, 1984, EPA and the State of Iowa entered into a delegation of authority agreement whereby Iowa automatically receives authority to implement and enforce federal NSPS and NESHAP standards upon the adoption of the standards by the state government. (See 50 FR 933.) Iowa revised its rules to adopt, by reference, the NSPS standards for 40 CFR part 60, subparts QQQ, SSS, and VVV and the NESHAPs for 40 CFR part 61, subparts L, Y, BB, and FF. The adoption action and regulation changes became effective May 22, 1991. The Iowa Department of Natural Resources (IDNR) informed EPA of the adoption action in a letter dated April 18, 1991. EPA subsequently acknowledged the adoption and the corresponding delegation of authority in a letter to IDNR on June 24, 1991. The delegation occurred under the terms of the above-mentioned August 20, 1984,

automatic delegation of authority agreement.

EPA hereby notifies interested individuals that, effective May 22, 1991, EPA delegated the authorization to implement and enforce the federally established standards for 40 CFR parts 60 and 61, subparts identified above, to the state of Iowa.

This document is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: September 10, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-23611 Filed 10-4-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-159; RM-7719]

Radio Broadcasting Services; Medicine Lodge, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 269C2 for Channel 240A at Medicine Lodge, Kansas, and modifies the construction permit for Station KREJ, in response to a petition filed by Florida Public Radio, Inc. See 56 FR 28128, June 19, 1991. The coordinates for Channel 269C2 are 37-13-58 and 98-39-43. In accordance with § 1.420(g) of the Commission's Rules, we have authorized a modification of the petitioner's construction permit for Station KREJ since no other expressions of interest have been received. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 15, 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. 91-159, adopted September 18, 1991, and released October 1, 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 Kansas, is amended by removing Channel 240A and adding Channel 269C2 at Medicine Lodge.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-23994 Filed 10-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-183; RM-7735]

Radio Broadcasting Services; Lexington and Pickens, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 290C2 for Channel 290C3, reallots the channel from Lexington to Pickens, Mississippi, and modifies the license for Station WLTD(FM) to specify Pickens as the community of license for Channel 290C2. This action is taken in response to a petition filed by J. Scott Communications, Inc. See 56 FR 30525, July 3, 1991. The coordinates for Channel 290C2 at Pickens are 32-39-38 and 90-03-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 15, 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. 91-183, adopted September 18, 1991, and released October 1, 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 290C3 at Lexington and adding Channel 290C2, Pickens.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-23993 Filed 10-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-646; RM-7524]

Radio Broadcasting Services; Yreka, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C1 for Channel 249C2 at Yreka, California, and modifies the license for Station KYRE(FM) to specify operation on the non-adjacent higher powered channel, as requested by Dalmation Enterprises, Inc. Although Channel 293C1 was proposed as an additional equivalent channel for use by other interested parties, it is not allotted since no interest in the use of the channel was expressed. See 56 FR 1507, January 15, 1991. Coordinates for Channel 280C1 at Yreka are 41-36-34 122-37-29. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 18, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-646, adopted September 18, 1991, and released October 2, 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, (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 California, is amended by removing Channel 249C2 and adding Channel 280C1 at Yreka.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-24097 Filed 10-4-91 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-415; RM-6943, RM-7257]

Radio Broadcasting Services; Cleveland and Rosedale, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes Channel 295A at Cleveland, Mississippi, reallots it as Channel 298C3 to Rosedale, Mississippi, and modifies the construction permit of Station WEZU(FM) to specify operation on Channel 298C3 at Rosedale. In addition, this action allots Channel 252C3 to Cleveland, Mississippi, as proposed in the Notice of Proposed Rule Making in this proceeding. See 54 FR 40894, September 4, 1989. Channel 298C3 can be allotted to Rosedale in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.8 kilometers (11.7 miles) northeast to avoid a short-spacing to Station WKXI-FM, Channel 298C1, Magee, Mississippi. The coordinates for Channel 298C3 at Rosedale are North Latitude 33-56-20 and West Longitude 90-51-10. Channel 252C3 can be allotted to Cleveland, Mississippi, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.7 kilometers (8.5 miles) northwest to avoid a short-spacing to Station WBAQ(FM), Channel 250C2, Greenville, Mississippi. The coordinates for Channel 252C3 at Cleveland are North Latitude 33-52-00 and West Longitude 90-45-00. With this action, this proceeding is terminated.

DATES: *Effective Date:* November 18, 1991.

The window period for filing applications for Channel 252C3, Cleveland, Mississippi, will open on November 19, 1991, and close on December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-415, adopted September 24, 1991, and released October 2, 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 298A and adding Channel 252C3 at Cleveland, and adding Channel 298C3, Rosedale.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-24098 Filed 10-4-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-09; Notice 02]

RIN 2127-AD 04

Federal Motor Vehicle Safety Standards; Brake Hoses

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

ACTION: Final rule.

SUMMARY: This notice amends Standard 106, Brake Hoses, by removing paragraphs S12 and 13 which exclude certain brake hose, fittings and assemblies from the standard's labeling requirements in S5.2, 7.2 and 9.1. NHTSA is deleting S12 and 13 because they are generally redundant. Most of their provisions exist in the labeling requirements located elsewhere in the standard. Also, NHTSA is removing S12 and 13 because they are inconsistent in some respects with the standard's labeling requirements, which could engender confusion about the requirements. This notice also makes other amendments to the labeling requirements.

DATES: The amendment is effective on November 6, 1991. Petitions for reconsideration of the final rule must be received by November 6, 1991.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Vernon Bloom, NRM-11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5277.

SUPPLEMENTARY INFORMATION: This notice removes paragraphs S12 and 13 from Standard 106 to improve the clarity of the labeling requirements of the standard, and makes other labeling amendments. S5.2, 7.2 and 9.1 of the standard specify that certain information (e.g., size, manufacturer identification) must be labeled on new brake hose, end fittings and assemblies. Exclusions of certain hose, fittings and assemblies from the labeling requirements are found in S5.2, 7.2 and 9.1. Exclusions are also found in S12 and 13.

The exclusions of S12 and 13 generally reflect the exclusions of S5.2, 7.2 and 9.1, and are therefore redundant to a degree. Further, as discussed fully in the NPRM, S12 and 13 are also in some respects inconsistent with the standard's labeling requirements, which could engender confusion about the requirements. NHTSA proposed to remove S12 and 13 (56 FR 7640; February 25, 1991) to eliminate the redundancies and inconsistencies posed by those paragraphs.

In addition to removing S12 and 13, the agency also proposed several labeling changes to the standard.

First, NHTSA proposed that S5.2.1 be amended to apply the striping requirement only to bulk hose and hose installed in an assembly. Thus, the

requirement would not apply to hose that is sold as part of a motor vehicle. NHTSA believed that once the hose is installed in the vehicle, the purpose for the stripes is fulfilled.

Second, the agency proposed to amend S5.2.4, 7.2.3 and 9.1.3 to remove the requirement that an assembly must be assembled by the vehicle manufacturer to be excluded from the assembly labeling requirements. Assemblies installed in new vehicles need not bear a label because the vehicle certification and identification information serves to certify and identify the hose assembly. NHTSA believed it would make no difference whether the vehicle manufacturer itself produced the assembly.

Third, the agency proposed to slightly modify the last sentence of the introductory paragraph of S5.2.2, 7.2.1, and 9.1.1 to make clear that the information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

Comments on NPRM

The agency received comments on the NPRM from Chrysler Corporation, Bendix Heavy Vehicle Systems Group of Allied-Signal Inc., and Volvo GM Heavy Truck Corporation. All commenters supported the proposed amendments to the standard. Chrysler said the proposed changes "will not affect automotive safety and will also enable manufacturers to provide safe brake hoses without additional regulatory cost."

After reviewing the comments, NHTSA has concluded the proposed changes to Standard 106 are warranted, and has adopted the changes in this final rule as proposed.

Volvo GM suggested the effective date of the amendment be the date of publication of the final rule in the **Federal Register**, instead of the proposed date (180 days after publication), because the amendment would impose no additional requirements. NHTSA has determined there is good cause shown for an earlier effective date because the rule clarifies the standard's labeling requirements, and relieves some restrictions on labeling components. NHTSA has further determined the effective date of the amendment will be 30 days after publication. The agency has specified that date to provide time for any person to submit a petition for reconsideration of the rule before the date on which the rule is effective.

Impact Analyses

NHTSA has concluded that this rule does not qualify as a "major rule" within the meaning of Executive Order 12291, and that the rule is not "significant" within the meaning of the Department of Transportation's regulatory procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a final regulatory evaluation is not warranted. The amendments that clarify the labeling requirements for hoses, fitting and assemblies do not significantly affect manufacturers because virtually all components are currently being produced with the correct labeling. The amendments that modify the striping requirements for hose and labeling assemblies only slightly modify present requirements by relieving present restrictions. Therefore, the agency anticipates that manufacturers will be only minimally affected.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it does not have a significant economic impact on a substantial number of small entities. Any manufacturer of brake hoses, end fittings or assemblies that might qualify as a small entity under the Regulatory Flexibility Act could benefit slightly by the amendment due to the clarification of the labeling requirements. However, the agency does not believe the amendment results in significant cost impacts for manufacturers since hoses, end fittings and assemblies are currently being produced with the correct labeling. There is no significant impact on the cost of vehicles, and small organizations and governmental jurisdictions that purchase motor vehicles are not significantly affected by the amendment.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Federalism

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

Regulatory Information Number

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—[AMENDED]

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.

§ 571.106 [Amended]

2. S5.2.1 is revised to read as follows:

S5.2.1 Each hydraulic brake hose, except hose sold as part of a motor vehicle, shall have at least two clearly identifiable stripes of at least one-sixteenth of an inch in width, placed on opposite sides of the brake hose parallel to its longitudinal axis. One stripe may be interrupted by the information required by S5.2.2, and the other stripe may be interrupted by additional information at the manufacturer's option. However, hydraulic brake hose manufactured for use only in an assembly whose end fittings prevent its installation in a twisted orientation in either side of the vehicle, need not meet the requirements of S5.2.1.

3. The introductory text of S5.2.2 is revised to read as follows:

S5.2.2 Each hydraulic brake hose shall be labeled, or cut from bulk hose that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

* * * * *

4. The introductory text of S5.2.4 is revised to read as follows:

S5.2.4 Each hydraulic brake hose assembly, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake hose assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S5.2.4.1. The band may at the manufacturer's option be attached so as to move freely along the length of the assembly, as long as it is retained by the

end fittings. The band shall be etched, embossed, or stamped in block capital letters, numerals or symbols at least one-eighth of an inch high, with the following information:

* * * * *

5. The introductory text of S7.2.1 is revised to read as follows:

S7.2.1 *Hose.* Each air brake hose shall be labeled, or cut from bulk hose that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

* * * * *

6. The introductory text of S7.2.3 is revised to read as follows:

S7.2.3 *Assemblies.* Each air brake hose assembly made with end fittings that are attached by crimping or swaging, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake hose assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S7.2.3.1. The band may at the manufacturer's option be attached so as to move freely along the length of the assembly, as long as it is retained by the end fittings. The band shall be etched, embossed, or stamped in block capital letters, numerals or symbols at least one-eighth of an inch high, with the following information:

* * * * *

7. The introductory text of S9.1.1 is revised to read as follows:

S9.1.1 *Hose.* Each vacuum brake hose shall be labeled, or cut from bulk hose that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

* * * * *

8. The introductory text of S9.1.3 is revised to read as follows:

S9.1.3 *Assemblies.* Each vacuum brake hose assembly made with end fittings that are attached by crimping or swaging and each plastic tube assembly made with end fittings that are attached by heat shrinking or dimensional interference fit, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake hose assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S9.1.3.1. The band may at the manufacturer's option be attached so as to move freely along the length of the assembly, as long as it is retained by the end fittings. The band shall be etched, embossed, or stamped in block capital letters, numerals or symbols at least one-eighth of an inch high, with the following information:

* * * * *

9. S12 and S13 are removed.

Issued on September 30, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-24017 Filed 10-4-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 194
Monday, October 7, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-036]

RIN 0579-AA21

Importation of Plants Established in Growing Media and Availability of Pest Risk Analysis Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Animal and Plant Health Inspection Service is currently developing "Standards for Pest Risk Analyses: Plants in Growing Media," which will be used to analyze the pest risk associated with the importation of plants established in growing media. Based on these analyses, we intend to propose changes to the regulations concerning the types of plants which may be imported established in growing media and the conditions under which such plants may be imported. This notice gives the public an opportunity to obtain and comment on the draft standards, and announces the first five genera of plants which will be analyzed using the standards.

DATES: Comments on the draft "Standards for Pest Risk Analyses: Plants in Growing Media," will be considered if they are received on or before November 21, 1991.

ADDRESSES: Copies of the draft "Standards for Pest Risk Analyses: Plants in Growing Media" may be obtained from Policy and Program Development, Planning and Risk Analysis Systems, APHIS, USDA, room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4391. To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-036. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John A. Acree, Chief, Planning and Risk Analysis Systems, Policy and Program Development, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-4391.

SUPPLEMENTARY INFORMATION: On February 15, 1991, the Animal and Plant Health Inspection Service (APHIS) published a proposal in the **Federal Register** (56 FR 6297-6315, Docket No. 87-005) to revise certain importation prohibitions, restrictions, and procedural requirements contained in "Subpart-Nursery Stock, Plant, Roots, Bulbs, Seeds, and Other Plant Products" (7 CFR 319.37 *et seq.*). This proposed rule also discussed future rulemaking actions by APHIS and draft standards for analyzing pest risks for plants imported established in growing media. These discussions are updated below.

A number of persons and organizations that learned of the draft risk assessment standards through the above proposed rule sent in comments on the draft risk assessment standards. These comments are being considered in the process of developing the final risk assessment standards, and these persons do not need to resubmit their comments in response to this **Federal Register** notice, unless they wish to do so.

Future Rulemaking Actions

APHIS intends to propose several amendments to "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and other Plant Products" (7 CFR 319.37 *et seq.*) during the next three years. Primarily, these amendments will consist of changes to the list of plants allowed to be imported established in growing media (7 CFR 319.37-8). APHIS has received requests from importers and foreign governments to allow more than 60 additional groups of plants established in growing media to be imported into the United States.

Generally, APHIS permits the entry of specified plants only after determining that the entry would present no significant pest risk to United States agriculture. The decision on whether to allow entry of each plant genus is time-consuming, and includes detailed analysis of pest risks associated with the genus. These pest risk analyses must be scientifically sound, thorough, and up-to-date. Pest risk analyses have been performed for the plants that are under consideration for entry established in growing media. However, most of the analyses were completed more than a year ago, and some are up to ten years old. APHIS is concerned that some of the analyses may now be outdated. In addition, the methods used in performing the analyses varied, because they were not conducted in accordance with a uniform pest risk analysis methodology. Therefore, APHIS intends to conduct new pest risk analyses for these 60 plant groups, using a uniform pest risk analysis methodology and up-to-date information.

Completing new pest risk analyses for all the plant groups that have been requested will take several years because new, uniform standards for pest risk analysis will be used. At the present time, APHIS is still developing the standards and procedures that will be used to evaluate the pest risks associated with the proposed entry of these plants established in growing media.

To prevent unnecessary delay in the publication of regulations, APHIS has decided to publish revisions to § 319.37-8 in several phases. Each time APHIS completes the pest risk analysis process for 5-15 plant groups, we intend to publish a proposed rule proposing to permit entry of those plants we believe can be safety imported.

Over the next three years, we expect to propose several rules, each listing plant groups APHIS proposes to add to the list in § 319.37-8. The plants to be addressed in the first pest risk analysis and the first proposed rule of this series will be of the following genera: *Anthurium, Alstroemeria, Ananas, Nidularium,* and *Rhododendron.*

These five genera were selected because they are among the first plants requested by foreign governments to be imported established in growing media. They also represent a diversity of horticultural and botanical types

suitable for the first application of the "Standards for Pest Risk Analysis: Plants in Growing Media" discussed below.

Draft "Standards For Pest Risk Analyses: Plants in Growing Media"

APHIS is currently developing the standards and procedures that will be used to evaluate the pest risks associated with the proposed entry of additional plants established in growing media. We have completed the draft standards describing possible methodologies for this type of pest risk assessment, and we are making the draft standards available for public review and comment.

Importers and others have requested that APHIS allow approximately 60 additional general of plants to enter the United States established in growing media. APHIS will perform a pest risk analysis for each genus. The results of each pest risk analysis will determine whether or not APHIS proposes to permit entry of the plant. Therefore, interested parties may wish to review and comment on the draft "Standards For Pest Risk Analyses: Plants in Growing Media."

These standards describe the process through which APHIS is developing risk analysis standards for entry of plants established in growing media. It discusses alternate methods for performing such analyses, and recommends standards to ensure that pest risk analyses are of high quality. It also discusses the types of data that must be used to perform a reliable analysis, and methodologies for evaluating that data.

Copies of the standards may be obtained from the source listed in "ADDRESSES" above in this document.

After considering comments on the draft standards, and revising it if necessary, we will publish a proposal in the **Federal Register** describing the procedures contained in the standards, and describing the results of the pest risk analyses conducted for *Anthurium, Alstroemeria, Ananas, Nidularium,* and *Thododendron.* At the same time, if recommendations are developed to permit entry of any of these genera, we will publish a proposal to amend the restrictions contained in 7 CFR 319.37–8 concerning importation of plants established in growing media.

We believe that by proposing the standards in the "Standards For Pest Risk Analyses: Plants in Growing Media" at the same time we propose regulations for the first five genera to be evaluated using these standards, we will give the interested public the maximum opportunity to comment on the standards, the proposed regulations for these five genera, and the relationship between the two. By seeing how the standards are put to use in evaluating specific genera, reviewers may come to a better understanding of exactly what the standards mean and how APHIS proposes to apply them. Based on the comments received on the proposed regulations for the five genera, APHIS may revise the standards document or the proposed regulations before proceeding to a final action for either one.

Done in Washington, DC, this 1st day of October 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–24063 Filed 10–4–91; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 70, and 72

RIN 3150–AD98

Decommissioning Recordkeeping and License Termination: Documentation Additions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require holders of a specific license for possession of byproduct material, source material, special nuclear material, and independent storage of spent nuclear fuel and high-level radioactive waste to prepare and maintain additional documentation identifying areas where licensed materials and equipment were stored or used outside restricted areas, areas where spills have occurred, locations and contents of current and previous burial areas within the site, and equipment involved in the licensing activity that will remain on site at the time of termination of the license. The information required by the amendments will provide greater assurance that decontamination and decommissioning of licensed facilities have been carried out in accordance with the Commission's regulations.

DATES: Comment period expires December 23, 1991. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:45 am and 4:15 pm Federal workdays.

Copies of comments received may be examined at the NRC Public Document room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3883.

SUPPLEMENTARY INFORMATION:

Background

NRC licenses subject to the requirements of 10 CFR parts 30, 40, 70, and 72 who wish to terminate their licenses must decontaminate all contaminated facilities and sites according to NRC requirements before the NRC can authorize the termination of the license. Therefore, the licensee's application for license termination, and other records on decommissioning available from the licensee, must contain sufficient information on the residual radioactivity levels in the licensee's facilities and sites to allow the NRC staff to make a determination on whether the licensee's facilities and sites can be released for unrestricted use.

A General Accounting Office (GAO) report, "NRC Decommissioning Procedures and Criteria Need to Be Strengthened" (GAO/RCED–89–119, May 26, 1989) indicated incomplete recordkeeping as a potential problem. The issue was also discussed by the NRC at the hearing before the Environment, Energy and Natural Resources Subcommittee of the House Committee on Government Operations, chaired by Congressman Mike Synar of Oklahoma (Synar Subcommittee) on August 3, 1989. Both the GAO report and the Synar Subcommittee were concerned that, because of poor or insufficient knowledge as to the location within a licensee's site where licensee activities were conducted, the NRC could terminate a license and release facilities and sites for unrestricted use which may be partially contaminated. Currently, NRC's rules on decommissioning recordkeeping (10 CFR 30.35(g), 40.36(f), 70.25(g), and 72.30(d)) specifically require licensees to keep certain records important to decommissioning in an identified location until the license is terminated

by the Commission. These records include drawings of structures and equipment in restricted areas where radioactive materials were used or stored, documentation identifying the location of inaccessible residual contamination, and detailed descriptions of spilled radioactive materials that can affect decommissioning. However, these requirements do not require the licensee to identify areas where licensed materials were stored or used outside restricted areas, or areas where spills have occurred but have been subsequently cleaned up, or equipment involved in the licensed activity that will remain on site at the time of termination of the license, or the location and radioactive contents of current or previous burial areas within the licensee's site.

Discussion

Although licensees are authorized to possess and use licensed materials only in areas described in the license application or the license condition, the description of those areas is often very general and, by itself, would not allow specific buildings and equipment involved in licensed operations to be clearly identified. A licensee's facility could include large areas of land and many individual buildings. Yet, these could be undifferentiated and identified only as an address which "identifies" the "location" of the licensed material in the license. Furthermore, over the course of many years, some rooms, buildings, areas, or onsite burial grounds that were previously used for licensed operations may no longer be used and corporate memory of the previous locations where licensed material was used may be lost.

Prior to terminating a license, the NRC must determine that all the land, including onsite burial grounds, buildings, and equipment involved in licensed operations has been decontaminated in accordance with Commission regulations. Clearly, requiring licensees to maintain a listing, contained in a single document, of all areas and buildings that have been contaminated or have been subject to potential contamination would facilitate that determination. The Commission believes that this type of listing is appropriate and necessary to ensure that decommissioning has been carried out thoroughly. Therefore, the Commission proposes to amend the current decommissioning recordkeeping sections under 10 CFR 30.35, 40.36, 70.25, and 72.30 to require licensees (except for those on-site areas which contain or have contained byproduct materials with only half-lives of 10 days or less or depleted uranium used for shielding or as penetrators in unused munitions) to maintain a listing in a single document and to certify the completeness and accuracy of that single listing. Areas which contain or have contained mixtures of materials not specifically excepted in the regulations, such as including any material with half-lives greater than 10 days, would also have to be listed. The listing should include:

(1) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(14) or 10 CFR 20.1003;

(2) All areas, other than restricted areas, where radioactive materials in quantities greater than those listed in 10 CFR part 20, Appendix C to sections 20.1001–20.2401, are or have been used, possessed, or stored;

(3) All areas, other than restricted areas, where spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site have occurred that required reporting pursuant to §§ 30.50 (b)(1) or b(4), 40.60 (b)(1) or b(4), 70.5 (b)(1) or (b)(4) of 10 CFR parts 30, 40, and 70, respectively;

(4) Areas where subsequent cleanup has removed the contamination; and

(5) The location of all known current and previous onsite burial areas, with their radionuclide content.

The Commission believes that certain exceptions (e.g., depleted uranium shielding) may be appropriate because the on-site use and storage of materials such as depleted uranium shielding have not resulted in any known contamination problems. This is not true for exploded or tested munitions containing depleted uranium. The Commission wishes to solicit public comments on the exceptions it has chosen for this proposed rule or any other exceptions that may be appropriate, including consideration of exceptions on a case-by-case basis. The Commission has chosen to except from the requirements of the rulemaking radioactive materials with half-life of 10 days or less for part 30 byproduct material licensees because these materials will have insignificant radiation impacts after about 100 days or approximately 3 months (about 10 half-lives). Thus, there is no benefit or specific need to identify areas and equipment that contain or contained the above variety of licensed materials. Of course, equipment to be left on site at the time of license termination are appropriate for listing since these may be potential sources of exposure.

The Commission recognizes that many material licensees (e.g., radiographers, well-loggers, portable gauge users, etc.) in both NRC and Agreement States are authorized to operate at "temporary job sites" outside of the licensee's permanent facility and site boundary as specified in the license. The Commission also recognizes that the greater majority of those licensees authorized to operate at temporary job sites as specified in the license are sealed source users (e.g., radiographers) who are required to establish temporary "restricted areas" in the performance of the service at each of the client sites they visit. The intent of the proposed regulations is to ensure that all major on-site contaminated facilities and sites are properly decontaminated at the time of actual decommissioning through reasonable good documentation practices. The Commission does not believe a requirement to list every single restricted area at temporary job sites outside of the licensee's permanent facility and site boundary is either practical or reasonable since the chances of contaminating the temporary job sites from sealed source users are minimal under normal usage conditions. In addition, the encapsulation integrity of the sealed sources are tracked as part of the NRC and Agreement States sealed source and device registration program. Of course, the Commission is concerned that contamination should be minimized regardless of whether contamination occurred on or off the licensee's site. But it believes that this goal is achievable through the licensee's contamination control program, material accountability program, and other radiological safety programs which are outside the scope of the proposed requirements.

Under current Commission regulations, licensees are required to keep information identified as important to decommissioning. The information identified in §§ 30.35(g), 40.36(f), 70.25(g), and 72.30(d), can be used by the staff in determining the adequacy of a licensee's decommissioning plans. The Commission also believes that this information should be part of the information permanently kept by the NRC documenting its finding for license termination. Hence, parts 30, 40, 70, and 72 are being amended to require that the information identified as important to decommissioning accompanys the licensee's decommissioning plan submittal. Other licensees who may not be required to submit a decommissioning plan, but from whom additional information is needed for the permanent record, will be requested to submit such information on a case-by-case basis. For those licensees who may have decontaminated part of their

facilities (e.g., several buildings within the site) and then released these buildings for sale or unrestricted use, without terminating the license, it is the intent of the commission that the licensee should maintain all records important to decommissioning for the released buildings until such time when the license is terminated.

Environmental Impact—Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3) (ii) and (iii).

Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulations.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0017, 3150–0020, 3150/0009, and 3150/0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Dr. Carl Feldman, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3883.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact upon a substantial number of small entities. The proposed rule would potentially affect all material licensees. For affected small entity licensees, the added requirements would require only a small effort of about 10 hours to compile the information and create the required listing. Fulfilling the proposed requirements should entail simply documenting information the licensees already have or will possess and may, overall, actually reduce licensee costs by allowing the license to be terminated more expeditiously.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1), and therefore, that a backfit analysis is not required.

List of Subjects

10 CFR Part 30

Byproduct material, Civil penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous material—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training program, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 40, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

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

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34(b), (c), (f), (g), and (i), 30.41 (a) and (c), and 30.53 are issued under secs. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 30.6, 30.9, 30.34(g), 30.35(g)(3), 30.36, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 30.8 is amended by revising paragraph (b) to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.51, 30.55, and 30.56.

* * * * *

3. Section 30.35 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(g) * * *

(3) A listing contained in a single document and certified by the licensee to be complete and accurate, of the following:

(i) All on-site areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003, except for areas containing byproduct materials having only half-lives of 10 days or less;

(ii) All on-site areas, other than restricted areas, where radioactive materials in quantities greater than amounts listed in appendix C to §§ 20.1001–20.2401 of 10 CFR part 20, except for areas containing byproduct materials having only half-lives of 10 days or less, are or have been used, possessed or stored; and

(iii) All on-site areas, other than restricted areas, where spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site have occurred that required reporting pursuant to § 30.50 (b)(1) or (b)(4), including areas where subsequent cleanup procedures have been removed the contamination.

(iv) All known locations and radionuclide contents of previous and current burial areas within the site.

* * * * *

4. section 30.36 is amended by redesignating paragraph (c)(2)(iii)D) as (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 30.36 Expiration and termination of licenses.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 30.35(g)(3) and any other information required by § 30.35(g) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list of the location and description of all equipment involved in the licensed operations that is to remain onsite at the time of license termination.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604. 92 Stat. 3033, as amended, 3039, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.7(g), 40.25(d)(1)–(3), 40.35 (a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, 950, as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); and §§ 40.5, 40.9, 40.25 (c), (d), (3), and (4), 40.26(c)(2), 40.35(e), 40.36(f)(3), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. Section 40.8 is amending by revising paragraph (b) to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.42, 40.61, 40.64, 40.65, and Appendix A.

* * * * *

7. Section 40.36 is amended by redesignating paragraph (f)(3) as paragraph (f)(4) and adding a new paragraph (f)(3) to read as follows;

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(3) A listing contained in a single document, certified by the licensee to be complete and accurate, of the following:

(i) All on-sites areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003, except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions;

(ii) All on-site areas, other than restricted areas, where radioactive materials in quantities greater than amounts listed in Appendix C to §§ 20.1001–20.2401 of 10 CFR Part 20 except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, are or have been used, possessed, or stored; and

(iii) All on-site areas, other than restricted areas, where spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site have occurred that required reporting pursuant to § 40.60 (b)(1) or (b)(4), including areas where subsequent cleanup procedures have removed the contamination.

(iv) All known locations and radionuclide contents of previous and current burial areas within the site.

* * * * *

8. Section 40.42 is amended by redesignating paragraph (c)(2)(iii)(D) as paragraph (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 40.42 Expiration and termination of licenses.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 40.36(f)(3) and any other information required by § 40.36(f) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list of the location and description of all equipment involved in the licensed operations that is to remain onsite at the time of license termination.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20(a)(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 2152). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138)

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 7.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 70.7, 70.20 (a) and (d), 70.206 (c), and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (H)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2202(i)); and §§ 70.5, 70.9, 70.20 (d) and (e), 70.25(g)(3), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. Section 70.8 is amended by revising (b) to read as follows:

§ 70.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.51, 70.52, 70.53, 70.57, 70.58, 70.59, and 70.60.

* * * * *

11. Section 70.25 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(g) * * *

(3) A listing contained in a single document, certified by the licensee to be complete and accurate, of the following:

(i) All on-site areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All on-site areas, other than restricted areas, where radioactive materials in quantities greater than amounts listed in Appendix C to §§ 20.1001–20.2401 of 10 CFR Part 20 are or have been used, possessed, or stored; and

(iii) All on-site areas, other than restricted areas, where spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site have occurred that required reporting pursuant to § 70.50 (b)(1) or (b)(4), including source areas where subsequent cleanup procedures have removed the contamination.

(iv) All known locations and radionuclide contents of previous and current burial areas within the site.

* * * * *

12. Section 70.38 is amended by redesignating paragraphs (c)(2)(iii)(D) and (c)(2)(iii)(E) as paragraphs (c)(2)(iii)(E) and (F), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 70.38 Expiration and termination of licenses.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 70.25(f)(3) and any other information required by § 70.25(f) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approval plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list of the location and description of all equipment involved in the licensed operations that is to remain onsite at the time of license termination.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102 Pub. L 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and 218(a) 98 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e),72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90(a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2202(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234(e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. Section 72.30 is amended by revising the section heading, redesignating paragraph (d)(3) as paragraph (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(d) * * *

(3) A listing contained in a single document, certified by the licensee to be complete and accurate, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a) (14) or 20.1003;

(ii) All areas, other than restricted areas, where radioactive materials in quantities greater than in amounts listed in Appendix C to §§ 20.1001–20.2401 of 10 CFR part 20 are or have been used, possessed, or stored.

15. Section 72.54 is amended by redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6), adding a new paragraph (b)(4) and revising paragraph (e)(2) to read as follows:

§ 72.54 Application for termination of license.

* * * * *

(b) * * *

(4) The information required in § 72.30(d)(3) and any other information required by § 72.30(d) that is considered necessary to support the adequacy of the decommissioning plan for approval;

(e) * * *

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI and site are suitable for release for unrestricted use and the licensee include a list of the location and description of all equipment involved in the licensed operations that is to remain onsite at the time of license termination.

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

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-23824 Filed 10-4-91; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 359

RIN 3064-AB11

Regulation of Golden Parachutes and Other Benefits Which Are Subject to Misuse

AGENCY: Federal Deposit Insurance Corporation ("FDIC" or "Corporation").

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing a rule limiting golden parachute and indemnification payments to institution-affiliated parties by insured depository institutions, depository institution holding companies and their subsidiaries and affiliates. The purpose of this proposed rule is to prevent the improper disposition of institution assets and to protect the financial soundness of insured depository institutions, depository institution holding companies, their subsidiaries and affiliates, and the federal deposit insurance funds.

DATES: Comments must be received by December 6, 1991.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments maybe hand-delivered to room 400, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838.)

FOR FURTHER INFORMATION CONTACT: Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898-6896; Jeffrey M. Kopchik, Counsel, Legal Division, (202) 898-3872; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant impact on a substantial number of small entities.

Discussion

Section 2523 of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 [1] ("Fraud Act") amended the Federal Deposit Insurance Act ("FDI Act") by adding a new section 18(k). Public Law No. 101-647, section 2523 (1990). This new section 18(k)(1) provides that "[t]he Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment." 12 U.S.C. 1828(k)(1). The terms "golden parachute payment" and "indemnification payment" are defined in sections 18 (k)(4) and (5)(A) of the FDI Act, respectively. *Id.* at 1828 (k)(4) and (5)(A).

The FDIC has decided to commence a rulemaking proceeding because it is of the opinion that the intent of section 18(k) is best administered by regulation. A regulation will enable insured depository institutions, depository institution holding companies, their subsidiaries and affiliates, and institution-affiliated parties ("IAP's") to enter into lawful compensation and indemnification agreements without inadvertently violating the intent of section 18(k). The Corporation is extremely interested in receiving comments concerning this important regulation. It is especially interested in comments concerning the "*bona fide* deferred compensation plan or arrangement" exception which is contained in section 18(k) (12 U.S.C. 1828(k)(4)(C)(ii)) and defined in § 359.1(d) of the proposed regulation.

[1] The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 is title XXV of the Crime Control Act of 1990, S. 3266, which was passed by Congress on October 27, 1990 and signed by the President on November 29, 1990.

Background

Although a golden parachute payment can take a variety of forms, generally it is a substantial cash payment which is made to an executive officer of a corporation at the termination of his/her employment. Golden parachute payments originally were used by non-financial services companies to protect executive officers involved in hostile takeovers. However, over the course of the past several years, their use has expanded. Golden parachutes payments and arrangements have become much more common in the financial services industry than ever before and their use is no longer limited to circumstances involving hostile takeovers. The majority of golden parachute agreements which the FDIC has encountered over the course of the past several years provide for payments upon termination of employment for any reason, except dishonesty or breach of fiduciary duty. The FDIC's concern with regard to such payments is that they may be inappropriate, and represent unsafe and unsound practices in the case of an institution which is experiencing financial difficulties. In the case of an institution which is close to insolvency, a significant golden parachute payment could "push the institution over the edge." Moreover, when an insured institution fails, amounts paid prior to failure pursuant to golden parachute agreements ultimately increase the cost of the failure to the deposit insurance funds.

Indemnification payments are payments which either reimburse officers, directors and employees for legal and other professional expenses incurred in defending themselves in legal proceedings growing out of their affiliation with the institution or pay such expenses "up front." Such payments can be made by the institution directly or pursuant to some form of commercial insurance policy. Although indemnification agreements may represent accepted business practice, the FDIC is concerned that, in certain circumstances, such agreements may undermine the ability of the various financial institution regulatory agencies to enforce federal banking laws and regulations. The deterrent effect of a penalty levied or judgment obtained against an IAP is negated if that penalty or judgment is paid or reimbursed by the institution or its holding company pursuant to an indemnification agreement.

With regard to golden parachute payments, the following are examples of

abuses which the FDIC has encountered in actual situations:

(1) A bank was rated a composite "4", had equity capital significantly below the established regulatory minimum and experienced significant losses during its last year of operation with no immediate prospects for improvement. The institution's chief executive officer had held his position with the institution for a significant period of time and was responsible for the policies and practices which led to the institution's financial difficulties. The CEO elected to retire two and one-half years prior to the termination of his existing employment agreement and requested payment of 100% of salary, approximately $1,250,000, plus retirement benefits equal to $300,000 per year. He received a portion of the requested payments. These payments caused a significant dissipation of assets and adversely affected the earnings of the bank.

(2) A savings association was in a "troubled" condition. As part of its plan for correction with the regulator, the institution's board of directors agreed to look for a buyer. The institution's president and cashier requested and received agreements that each of them would be paid $500,000 if the institution were sold.

(3) As a result of an examination, the FDIC concluded that a small, local bank was insolvent and informed the bank's president and board of directors of the finding. The board initially agreed to cooperate with the regulators and allow on-site review of loan files by prospective bidders until the FDIC could arrange for the institution's sale within the next couple of months. Approximately one month after the FDIC informed the institution that it was insolvent, the institution's president informed the board that he had decided to resign prior to the bank's closure and requested that he be paid for the remainder of the term of his employment agreement in a lump sum. The institution's board of directors agreed, and paid the resigning president approximately $62,000.

These examples are representative of some of the types of abuses which the FDIC has encountered involving golden parachute payments. In each of these cases, institutions which were experiencing severe financial difficulties paid or agreed to pay substantial sums to institution-affiliated parties. These payments were not in the best interests of the institution and, therefore, not in the best interest of the FDIC. They demonstrate the need for limitations on such payments in order to prevent the dissipation of an institution's assets and to protect the deposit insurance funds.

With regard to indemnification payments, the following are examples of abuses which the FDIC has encountered in actual situations:

(1) An institution was rated a composite "5" and scheduled to be placed into conservatorship. Two months prior to commencement of the conservatorship, the institution's board of directors transferred $100,000 of the institution's funds to its holding company which deposited those funds in another institution in order to pay anticipated legal expenses of the institution's senior officers and directors. In addition, the board authorized a $100,000 prepayment to the institution's outside law firm for the same purpose. These payments were made to protect directors from possible lawsuits if the institution closed, and for the defense of actions taken by regulators.

(2) As a result of an FDIC examination, a bank was determined to be insolvent. The FDIC informed the bank's board of directors that the institution would likely be closed within the next several months. Approximately one week after the FDIC's notice, the board made a $100,000 prepayment to cover anticipated legal expenses to the bank's outside law firm. Several weeks later, the bank's president utilized bank funds to purchase a $100,000 certificate of deposit at another financial institution to be used as a "self insurance indemnity trust account." These payments were made to protect directors from possible lawsuits if the bank closed, and for the defense of actions taken by regulators.

These examples are representative of the types of abuses which the FDIC has encountered involving indemnification payments. They demonstrate that limitations on indemnification payments are necessary in order to protect the financial integrity of insured institutions and to preserve the deterrent effect of administrative or civil enforcement actions which result in judgments against institution-affiliated parties.

Prior to the passage of the Fraud Act, the Chairman of the FDIC testified in support of a statutory provision restricting golden parachutes payments on four separate occasions.[2] On one such occasion, the Chairman stated that:

> The FDIC thinks it unconscionable that directors, officers and others responsible for an insured institution's failure—or near failure—should be able to line their pockets with an insured institution's money at the expense of the Federal deposit insurance funds. Paying golden parachute money to a director, officer, or other responsible party in the case of a failed or failing insured institution amounts essentially to paying that person with a check drawn on the Federal deposit insurance funds.

Testimony of L. William Seidman, Chairman, Federal Deposit Insurance Corporation, Committee on the Judiciary, United States Senate, July 24, 1990.

The legislative history of the Fraud Act indicates that the authority to prohibit or limit golden parachute and indemnification payments was conferred on the FDIC by Congress as part of its effort to provide the Corporation with "additional tools to combat fraud and abuse affecting financial institutions." 136 Cong. Rec. E3684 (daily ed. November 2, 1990) (statement of Rep. Schumer). More specifically, subtitle B of the Fraud Act, where section 2523 appears, "is aimed at protecting assets from wrongful disposition * * *." *Id.* In supporting this new authority, the FDIC was aware of several recent examples (in addition to those described above) of insured depository institutions which had paid institution-affiliated parties substantial sums upon the termination of their employment despite the fact that each institution was in an unsound condition when the payment was made and that the individual who received the payment was a longstanding member of senior management who caused, was responsible for, or had been in a position to have been able to influence the institution's activities and policies which resulted in its unsatisfactory financial condition.

Thus, it is the FDIC's opinion that golden parachute and indemnification payments, as defined in the Fraud Act, are not appropriate or justified except in the clearly-defined circumstances discussed below.

Enforcement

It is the FDIC's view that enforcement of this proposed regulation will be a

[2] *See* Testimony of L. William Seidman, Chairman, Federal Deposit Insurance Corporation, before the Banking and Financial Institutions Subcommittee, Committee on Banking, United States House of Representatives, March 14, 1990; Testimony of L. William Seidman, Chairman, Federal Deposit Insurance Corporation, on the Prosecution of Financial Crimes before the Subcommittee on Criminal Justice, Committee on the Judiciary, United States House of Representatives, July 11, 1990; Testimony of L. William Seidman, Chairman, Federal Deposit Insurance Corporation, on the Prosecution of Financial Crimes before the Committee on the Judiciary, United States Senate, July 24, 1990; Testimony of L. William Seidman, Chairman, Federal Deposit Insurance Corporation, on the Prosecution of Financial Crimes before the Committee on Banking, Housing and Urban Affairs, United States Senate, August 2, 1990.

matter for the appropriate federal banking agency, although the regulation requires the FDIC's written concurrence in the event that an institution or its holding company requests permission to make a golden parachute payment. In the event that an institution or holding company chooses to make such a request, the FDIC expects that the institution would make simultaneous and identical submissions to its primary regulator and the FDIC so that each agency could properly and promptly evaluate the institution's request. Also, the legislative history of section 18(k) makes clear that this section of the Fraud Act is not intended to limit or restrict the appropriate federal banking agencies from exercising their existing authority to restrict such payments or other unsafe and unsound practices. *Id.*

Generally, the proposed regulation prohibits institutions which are insolvent, in conservatorship or receivership, rated "4" or "5", in a troubled condition as defined in the regulations of the appropriate federal banking agency, or which are subject to a proceeding to terminate deposit insurance from making any payment to an institution-affiliated party which is contingent on the termination of that person's affiliation with the institution, except payments of death or disability benefits, payments pursuant to qualified retirement plans and two other exceptions which are described in more detail below. The proposed regulation also prohibits institutions from paying or reimbursing an institution-affiliated party's legal and other professional expenses incurred in administrative or civil proceedings instituted by an appropriate federal banking agency unless certain criteria are satisfied. Under no circumstances does the regulation allow the reimbursement or payment of fines or penalties assessed or judgments or settlements obtained against an institution-affiliated party as a result of such a proceeding.

Exceptions to Golden Parachute Payment Prohibition

The FDIC is proposing three "exceptions" to the prohibition against golden parachute payments.[3] First, § 359.4 of the proposed regulation allows an insured depository institution, depository institution holding company and any subsidiary or affiliate thereof to make a golden parachute payment to an institution-affiliated party who is hired by an institution or holding company with the written consent of the appropriate federal banking agency at a time when the institution or holding company satisfies any of the criteria set forth in § 359.1(g)(1)(ii) of the proposed regulation,[4] and whose golden parachute agreement is approved by the FDIC. These criteria are taken from section 18(k). (12 U.S.C 1828(k)(4)(A)(ii)).

The purpose of this exception is to permit a troubled institution or depository institution holding company to attempt to reverse its slide toward economic failure by attracting competent, new management which enjoys the confidence of that institution's primary federal regulator and the FDIC. However, the FDIC is aware that individuals who possess the experience and expertise which qualify them for such a position are highly sought after business persons who, in most circumstances, already have established successful careers with other financial institutions. In order to induce such an individual to leave an established, stable career for a job in a troubled institution which may not survive regardless of that individual's efforts, it is generally necessary to agree to pay that individual some sort of severance payment in the event that the efforts of the individual for the institution are not successful. It is the FDIC's view that, as long as the individual is not guilty of improper conduct while in the troubled institution's employ (as delineated in § 359.2(b) of the proposed regulation), such agreements reflect good business judgment, recognize the realities of the marketplace and may benefit both the institution and the deposit insurance funds.

The second "exception" is contained in § 359.1(g) of the proposed regulation, which defines a "golden parachute payment." The FDIC recognizes that one important tool in restoring an institution to financial health may be institutional downsizing through personnel reductions in force. In such situations, institutions may choose to employ an existing severance pay plan or adopt a new plan to assist employees whose employment is terminated. In addition, many corporations (in various industries) maintain severance pay plans which pay benefits to employees who lose their jobs through no fault of their own, for reasons such as an overall reduction in force.

It is the FDIC's view that section 18(k) is not intended to discourage financial institutions from making the difficult, but sometimes necessary, decision to reduce expenses by reducing staff and from providing some sort of reasonable and responsible financial assistance to affected employees. The FDIC is also of the opinion that section 18(k) is not intended to invalidate traditional severance benefits for employees who lose their jobs (through no fault of their own) for other reasons. Thus, § 359.1(g)(2)(iv) of the proposed regulation provides that the term "golden parachute payment" does not include any payment made pursuant to a nondiscriminatory severance plan or arrangement which provides for the payment of severance benefits to all eligible employees upon involuntary termination for other than cause. However, the proposal limits the maximum severance benefit that any employee may receive pursuant to such a plan to six months' base salary because in the view of the FDIC, absent such a limitation, the intent of the Fraud Act could be circumvented. In the event that any senior executive officer, as defined in § 303.14(a)(3) of these regulations, is eligible for such severance benefits, the depository institution or holding company must provide 30 days prior written notice to its primary regulator and the FDIC before making such a payment to those individuals.

The third "exception" to the golden parachute payment prohibition is contained in § 359.1(d) of the proposed regulation which defines "*bona fide* deferred compensation plan or arrangement." Section 18(k) of the FDI Act explicitly authorizes the FDIC to define, by regulation or order, permissible "*bona fide* deferred compensation plan[s] or arrngements[s]." (12 U.S.C. 1828(k)(4)(C)(ii)). The FDIC is aware that many corporations, including financial institutions, supplement an employee's retirement benefits through the use of deferred compensation plans. Generally, these plans (which are not qualified under section 401 of the Internal Revenue Code of 1986) are intended to supplement traditional tax qualified defined benefit or defined contribution retirement plans. Such deferred compensation plans are utilized almost exclusively for the benefit of senior executive officers. Although such plans can be structured in numerous ways, they are primarily categorized as "elective", "excess", or "supplemental."

In an elective plan, an institution-affiliated party voluntarily elects to

[3] More precisely, only one of these is an actual exception in that it permits a payment or agreement which is covered by the statutory language. The other two are definitions of statutory terms which have been developed or refined by the Corporation.

[4] These criteria are that the institution or holding company is insolvent, in conservatorship of receivership, troubled, rated "4" or "5", or subject to a proceeding to terminate deposit insurance.

defer compensation which he/she could receive when it is earned. These deferred funds are maintained in a trust account which the institution-affiliated party can access when he/she leaves the institution. In view of the fact that the institution-affiliated party earns these funds at the time the work is performed, has the option of receiving payment at that time and pays income taxes on such earnings at that time, the FDIC is of the opinion that the receipt of such funds at a later time (when the institution otherwise is subject to any of the criteria of § 359.1(g)(1)(ii) of the proposed regulation) would not be a prohibited golden parachute payment.

Excess plans are maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1986. (Thus, they are often referred to as "piggyback" plans.) In an excess plan, the institution-affiliated party does not have the option of taking the deferred compensation while still employed by the institution. The deferred compensation is received only when the institution-affiliated party leaves the institution or retires. Such plans generally are unfunded and, thus, exempt from the requirements imposed by the Employee Retirement Income Security Act of 1974 ("ERISA"). If such a plan is funded, a trust generally is used and the plan would not be exempt from ERISA's reporting, disclosure and fiduciary rules. The use of such plans to attract and retain qualified executives is common in the financial services industry and other businesses. The FDIC is aware that undue restrictions on these plans could be disadvantageous to the financial services industry and contrary to the intent of Congress in enacting the Fraud Act. However, the Corporation is also concerned that such plans could be utilized to circumvent the intent of section 18(k) of the FDI Act. Thus, the proposed regulation permits payments pursuant to these excess plans as long as the plan is funded, was in effect at least one year prior to the occurrence of any of the events described in § 359.1(g)(1)(ii) of the proposed regulation and the institution-affiliated party is vested under the terms of such a plan. The FDIC is of the opinion that application of these factors is the best way to distinguish between a permissible *bona fide* deferred compensation plan as intended by Congress and an impermissible attempt to circumvent the restriction on golden parachute payments.

Supplemental (or "top-hat") plans are maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees. It is the FDIC's understanding that supplemental plans are not funded because funding would render them subject to all the requirements imposed by title I of ERISA. Instead, benefits are paid from the general assets of the corporation. As such, these assets are also available to the corporation's creditors in the event that the corporation becomes insolvent. Because these plans are not funded, they are essentially a promise to pay a sum of money at some time in the future when the IAP leaves the institution. As such, supplemental plans are indistinguishable from a prohibited golden parachute payment, and thus do not fall within the exception for *bona fide* deferred compensation plans or arrangements.

The proposed regulation does not permit institutions, holding companies and institution-affiliated parties to continue to contribute to such excess and supplemental plans upon the occurrence of any of the events delineated in § 359.1(g)(ii) of the proposed regulation. At that point in time, further contributions would be prohibited. However, the institution-affiliated party would have the right to receive funds which were lawfully contributed prior to the institution's troubled condition.

Additional Exceptions and Factors Considered

Section 18(k)(2) of the FDI Act provides that the FDIC "shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) [its authority to prohibit or limit golden parachute payments and indemnification payments]." The section also sets forth a number of illustrative factors that should be considered. The Corporation has carefully considered these factors in arriving at the conclusion that golden parachute payments generally should be prohibited, except in the narrow circumstances delineated in § 359.4 of the proposed regulation. However, § 359.2(b) of the proposed regulation also sets forth a procedure to allow an institution which desires to make a payment or enter into an agreement which it determines should not be prohibited, but which is not clearly covered by any of the express "exceptions" to the prohibition, to solicit appropriate regulatory approvals. In so doing, the institution will be required to address certain of the factors enumerated in section 18(k), and the appropriate federal banking agency and the Corporation may consider the remaining factors and any other circumstances which bear on the issue of whether the proposed payment would be contrary to the intent of the prohibition. It is the Corporation's expectation that such approvals would be granted infrequently.

Indemnification Payments

Section 18(k) also authorizes the FDIC to prohibit or limit indemnification payments. An "indemnification payment" is defined as payment by an insured depository institution or depository institution holding company for the benefit of an IAP in order to pay or reimburse such person for any liability or legal expense sustained with regard to an administrative or civil enforcement action which results in a final order against the IAP. (12 U.S.C. 1828(k)(5)). The legislative history of the Fraud Act makes it clear that this section is intended (i) to preserve the deterrent effects of administrative enforcement or civil actions by insuring that institution-affiliated parties who are found to have violated the law, engaged in unsafe or unsound banking practices or breached any fiduciary duty to the institution, pay any civil money penalties and associated legal expenses out of their own pockets without reimbursement from the institution or its holding company and (ii) to safeguard the assets of financial institutions by prohibiting the expenditure of funds to defend, pay penalties imposed on or reimburse institution-affiliated parties who have been found to have violated the law. 136 Cong. Rec. E3687 (daily ed. November 2, 1990) (statement of Rep. Schumer).

The difficulty in enforcing such a prohibition, however, is that the parties involved do not know whether the proceeding will result in a final order against the institution-affiliated party until the proceeding has been concluded. Pending such conclusion, legal and other professional costs incurred in defending such an action can be substantial and impose significant hardships upon institution-affiliated parties who do not possess the financial resources to absorb such expenses. In recognition of this concern, the Office of the Comptroller of the Currency has issued a staff opinion which describes guidelines that permit national banks under certain circumstances to pay or reimburse an officer, director or employee for legal expenses incurred in

defending against a civil action instituted by the Comptroller prior to the entry of a final order in the IAP's favor. OCC Investment Securities Letter No. 43 (July 1990). Section 8.53 of the Model Business Corporation Act also contains suggested provisions which address director and officer indemnification similar to the OCC's guidelines.

The FDIC is of the opinion that it would be inconsistent with the intent of the Fraud Act categorically to prohibit insured depository institutions and holding companies from advancing funds to pay or reimburse IAP's for reasonable legal or other professional expenses incurred in defending against an administrative or civil action brought by the appropriate federal banking agency prior to the entry of a final order. Therefore, § 359.5 of the proposed regulation sets forth the circumstances under which such indemnification payments may be made. The FDIC is of the opinion that six criteria must be satisfied in order to permit an institution to make or agree to make any indemnification payment to or for the benefit of any IAP prior to the entry of a final order in the IAP's favor. First, the institution's board of directors, in good faith, must certify in writing that the IAP has a substantial likelihood of prevailing on the merits in the proceeding. In the FDIC's view, it would be inconsistent with the intent of section 18(k) to allow an institution's board of directors to authorize indemnification of an institution-affiliated party if, after examining the relevant facts and information, the directors conclude that the IAP does not have a substantial likelihood of prevailing on the merits. Second, the board must determine in writing that the indemnification payments will not adversely affect the institution's safety and soundness. It is well-established that a board of directors' primary duty is to the financial institution itself and that its financial soundness cannot be jeopardized to benefit any director, officer or employee. Third, the board of directors is obligated to cease making or authorizing indemnification payments in the event that it believes, or reasonably should believe, that the first two conditions discussed above are no longer being met. This condition imposes a duty on the institution's board actively to monitor the situation. If, for example, the board becomes aware of facts (previously unknown to it) which establish that the IAP knowingly and unambiguously violated an applicable statute or regulation, it could no longer reasonably believe that the IAP has a substantial likelihood of prevailing on the merits, and should terminate indemnification payments. To fail to do so would be a violation of the regulation. The FDIC believes that the imposition of such an obligation is reasonable and consistent with the intent of the Fraud Act and a board's responsibility to the institution it serves. The fourth condition makes clear that any indemnification payment authorized by the institution's board of directors is limited to the payment or reimbursement of legal or other professional expenses incurred in connection with an IAP's involvement in any administrative proceeding or civil action instituted by the appropriate federal banking agency and shall not include payment or reimbursement for the amount of, or any cost incurred in connection with, any settlement of the proceeding or any judgment or penalty imposed with respect to any proceeding. This condition is intended to clarify that under no circumstances may indemnification payments be used to pay, directly or indirectly, the amount of any settlement of a proceeding or any penalty or judgment imposed on or obtained against the IAP. Fifth, the IAP must agree in writing to reimburse the institution for an indemnification if he/she does not prevail on the merits. In the Corporation's view, such a commitment represents an equitable arrangement. The IAP obtains the benefit of indemnification made in advance, but the institution can recover payments made pursuant to such indemnification agreements if it is ultimately determined that the IAP acted improperly. Sixth, the insured depository institution or depository institution holding company must provide the appropriate federal banking agency and the FDIC with prior written notice of its board's authorization of such indemnification.

The definition of "indemnification payment" in section 359.1(h) of the proposed regulation includes (i) payments made by an institution to an institution-affiliated party to reimburse him/her for expenses already incurred and paid, (ii) payments made on behalf of an institution-affiliated party by the institution directly to a law firm or other professional organization which is providing professional services to the IAP in connection with the defense of an administrative or civil action and (iii) payments made by the institution to purchase commercial insurance or fidelity bond coverage which will pay or reimburse the IAP for such expenses.[5] It also should be noted that the definition of indemnification payment does not include, and therefore the regulation does not prohibit, payments made pursuant to insurance coverage purchased directly by the IAP at his/her own expense.

Other Issues

The FDIC also would like to clarify several other points concerning the scope of the proposed regulation. First, the proposed regulation will affect existing agreements between institutions and institution-affiliated parties to pay golden parachute and indemnification payments in the future. For example, a healthy institution which enters into a permissible golden parachute agreement and subsequently meets any of the criteria of § 359.1(g)(1)(ii) of the proposed regulation, would no longer be permitted to make a golden parachute payment pursuant to that agreement so long as it continues to meet any of these criteria. Second, the FDIC will consider any payment of unearned wages pursuant to an employment contract which is terminated prior to its stated termination date (e.g., payment of an institution-affiliated party's salary for the final year of an employment contract which is terminated with one year remaining) to be a prohibited golden parachute payment, if the circumstances in § 359.1(g)(1)(ii) of the proposed regulation are present when the payment is made. Third, the FDIC and the other federal banking agencies will examine very closely any attempt by an institution or holding company to circumvent the proposed regulation by continuing to employ the IAP in some other capacity (e.g., as a "consultant") subsequent to the payment of what otherwise would clearly be a prohibited golden parachute payment.

Request for Public Comment

The FDIC hereby requests comment on all aspects of the proposed rule, including both legal and policy considerations. In particular, with respect to both the golden parachute and indemnification limitations, we request comments on whether the regulation appropriately balances the protection of the insurance funds with the needs of insured depository institutions and depository institution holding companies to attract and retain

[5] In the event that the IAP is required to provide reimbursement and his/her legal expenses have been paid pursuant to a commercial insurance policy or fidelity bond purchased by the institution or its holding company, the IAP shall reimburse the institution or its holding company for that portion of the cost of the policy or bond attributable to the IAP's defense in the administrative or civil action. The FDIC anticipates that this information should be available to the institution from the insurer.

qualified directors and management. Further, we request comments on the overall public benefit and cost-effectiveness of the proposed restrictions concerning indemnification and the permissible scope or director's and officer's liability insurance, taking into account the cost and availability of such insurance to insured depository institutions and their holding companies. Interested persons are invited to submit comments during a 60-day comment period.

List of Subjects in 12 CFR Part 359

Banks, banking; Golden parachute payments; Indemnification payments.

For the reasons set out in the preamble, the FDIC hereby proposes to add part 359 to title 12, chapter III, subchapter B, of the Code of Federal Regulations to read as follows:

PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.
359.1 Definitions
359.2 Golden parachute payments prohibited
359.3 Indemnification payments prohibited
359.4 Permissible golden parachute payments
359.5 Permissible indemnification payments

Authority: 12 U.S.C. 1828(k).

§ 359.1 Definitions.

(a) *Act* means the Federal Deposit Insurance Act, as amended (12 U.S.C. 1811, *et seq.*).

(b) *Appropriate federal banking agency* means:

(1) The Comptroller of the Currency, in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank and its subsidiaries;

(2) The Board of Governors of the Federal Reserve System, in the case of—

(i) Any State member insured bank (except a District bank) and its subsidiaries; and

(ii) Any bank holding company and any subsidiary of a bank holding company (other than a bank or a subsidiary of a bank);

(3) The Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank), or a foreign bank having an insured branch and its subsidiaries; and

(4) The Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company.

(c) *Bank holding company* has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(d) *Bona fide deferred compensation plan or arrangement* means any plan, contract, agreement or other arrangement whereby:

(1) An institution-affiliated party voluntarily elects to defer (by reducing wages paid) until the termination of such party's employment, a portion of the reasonable compensation for services rendered which otherwise would have been paid to such party at the time the services were rendered; or

(2) An insured depository institution or depository institution holding company establishes a nonqualified deferred compensation plan:

(i) Solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1986 (26 U.S.C. 415); or

(ii) Primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

Provided, however, that such plan was in effect at least one year prior to any of the events described in paragraph (g)(1)(ii) of this section, the institution-affiliated party is vested in such plan at the time of termination of employment and such plan is funded by the institution or holding company. For purposes of this paragraph (d)(2), a plan is funded if specific assets are segregated or otherwise set aside so that such assets are not available to the institution or holding company for any purpose other than distribution to the participating employee(s) and are not available to satisfy claims of the institution's or holding company's creditors.

(e) *Corporation* means the Federal Deposit Insurance Corporation.

(f) *Depository institution holding company* means a bank holding company or a savings and loan holding company, or any direct or indirect subsidiary thereof, other than an insured depository institution.

(g) *Golden parachute payment.* (1) The term *golden parachute payment* means any payment (or any agreement to make any payment) by any insured depository institution or depository institution holding company for the benefit of any person who is or was an institution-affiliated party pursuant to an obligation of such institution or holding company that:

(i) Is contingent on or payable on or after the termination of such party's primary employment or affiliation with the institution or holding company; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency of the insured depository institution or depository institution holding company, or any insured depository institution subsidiary of such holding company; or

(B) The appointment of any conservator or receiver for such insured depository institution; or

(C) A determination by the insured depository institution's or depository institution holding company's appropriate federal banking agency, respectively, that the insured depository institution or depository institution holding company is in a troubled condition, as defined in the applicable regulations of the appropriate federal banking agency (§ 303.14(a)(4) of this chapter); or

(D) The insured depository institution is assigned a composite rating of 4 or 5 by the appropriate federal banking agency or informed in writing by the Corporation that it is rated a 4 or 5 under the Uniform Financial Institutions Rating System of the Federal Financial Institutions Examination Council; or

(E) The Corporation initiates a proceeding against the insured depository institution to terminate or suspend deposit insurance for such institution.

(2) *Exceptions.* The term *golden parachute payment* shall not include:

(i) Any payment made pursuant to a retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or other nondiscriminatory benefit plan; or

(ii) Any payment made pursuant to a *bona fide* deferred compensation plan or arrangement as defined in paragraph (d) of this section or which the Corporation determines by order to be permissible; or

(iii) Any payment made by reason of the death or disability of an institution-affiliated party; or

(iv) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement which provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause; *provided, however,* that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the six months immediately preceding termination of employment, the institution may prescribe reasonable eligibility requirements applicable to all employees such as a minimum length of service requirement, and such severance pay plan or arrangement shall not have been modified to increase the amount or

scope of severance benefits at a time when the insured depository institution or depository institution holding company was in a condition specified in paragraph (g)(1)(ii) of this section or in contemplation of such a condition; *provided further, however*, that no such payment shall be made to any senior executive officer (as defined in § 303.14(a)(3) of this chapter) of any insured depository institution or depository institution holding company without providing 30 days prior written notice to the appropriate federal banking agency and the FDIC.

(h) *Indemnification payment.* (1) The term *indemnification payment* means any payment (or any agreement or arrangement, pursuant to any charter or bylaw provision, to make any payment) by any insured depository institution or depository institution holding company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by any federal or state banking agency which results in a final order pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution.

(2) *Exception.* The term *indemnification payment* shall not include any payment by an insured depository institution or depository institution holding company which is used to purchase any commercial insurance policy or fidelity bond, except that such insurance policy or bond shall not be used to make any prohibited indemnification payment other than reimbursement to the insured depository institution or depository institution holding company as required under a formal order described in paragraph (h)(1)(iii) of this section.

(i) *Insured depository institution* means any bank or savings association the deposits of which are insured by the Corporation pursuant to the Act, or any subsidiary thereof.

(j) *Institution-affiliated party* means:

(1) Any director, officer, employee, or controlling stockholder (other than a depository institution holding company) of, or agent for, an insured depository institution or depository institution holding company;

(2) Any other person who has filed or is required to file a change-in-control notice with the appropriate federal banking agency under section 7(j) of the Act (12 U.S.C. 1817(j)) in respect of an insured depository institution or depository institution holding company;

(3) Any shareholder (other than a depository institution holding company), consultant, joint venture partner, and any other person as determined by the appropriate federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution or depository institution holding company; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in: Any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution or depository institution holding company.

(k) *Liability or legal expense* means:

(1) Any legal or other professional fees and expenses incurred in connection with any claim, proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(l) *Payment* means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation; and

(3) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(m) *Savings and loan holding company* has the meaning given to such term in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461 et seq.)

§ 359.2 Golden parachute payments prohibited.

(a) No insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment, except as provided in paragraphs (b) and (d) of this section and § 359.4 of this part.

(b) Notwithstanding paragraph (a) of this section, an insured depository institution or depository institution holding company may make or agree to make a golden parachute payment if, and to the extent that, the appropriate federal banking agency, with the written concurrence of the Corporation, determines that such a payment or agreement is permissible. An insured depository institution or depository institution holding company seeking such a determination shall demonstrate that:

(1) There is no reasonable basis to believe, at the time such payment is proposed to be made, that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had or is likely to have a material adverse effect on the institution or holding company;

(2) There is no reasonable basis to believe, at the time such payment is proposed to be made, that the institution-affiliated party is substantially responsible for the insolvency of the insured depository institution, depository institution holding company or any insured depository institution subsidiary of such holding company, the appointment of a conservator or receiver for the depository institution or any insured depository institution subsidiary of the insured depository institution holding company, or the troubled condition of the insured depository institution, insured depository institution holding company or any insured depository institution subsidiary of such holding company, as defined in the applicable regulations of the appropriate federal banking agency;

(3) There is no reasonable basis to believe, at the time such payment is proposed to be made, that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had or is likely to have a material effect on the insured depository institution or depository institution holding company; and

(4) There is no reasonable basis to believe, at the time such payment is

proposed to be made, that the institution-affiliated party has violated or conspired to violate section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a federally insured financial institution as defined in title 18 of the United States Code.

(c) In making a determination under paragraph (b) of this section, the appropriate federal banking agency and the Corporation may consider:

(1) Whether, and to what degree, the institution affiliated party was in a position of managerial or fiduciary responsibility;

(2) The length of time the institution-affiliated party was affiliated with the insured depository institution or depository institution holding company, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 18(k) of the Act or this part.

(d) Notwithstanding paragraphs (a) and (b) of this section, a depository institution holding company that is a diversified holding company as defined in section 10(a)(1)(F) of the Home Owner's Loan Act (12 U.S.C. 1461 et seq.) may make a golden parachute payment if, and to the extent that, such depository institution holding company determines and can demonstrate that:

(1) The conditions delineated in paragraphs (b) (1), (2), (3) and (4) of this section have been satisfied; and

(2) The institution-affiliated party falls within the definition of "institution-affiliated party" solely because such person is a director, officer, employee or controlling stockholder of a diversified holding company.

§ 359.3 Indemnification payments prohibited.

No insured depository institution or depository institution holding company shall make or agree to make any indemnification payment, except as provided in § 359.5 of this part.

§ 359.4 Permissible golden parachute payments.

An insured depository institution or depository institution holding company may agree to make a golden parachute payment if:

(a) Such an agreement is made with respect to an institution-affiliated party who was hired by an insured depository institution or depository institution holding company at a time when that institution or holding company satisfied any of the criteria set forth in § 359.1(g)(1)(ii) of this part and the institution's appropriate federal banking agency and the Corporation consented in writing to the amount and terms of the golden parachute payment; and

(b) At the time the payment is made, the factors delineated in § 359.2(b) (1), (2), (3), or (4) of this part have been satisfied, and the factors delineated in § 359.2(c)(3) of this part are not present.

§ 359.5 Permissible indemnification payments.

(a) An insured depository institution or depository institution holding company may make or agree to make reasonable indemnification payments to an institution-affiliated party if:

(1) The institution's or holding company's board of directors, in good faith, determines in writing that the institution-affiliated party has a substantial likelihood of prevailing on the merits;

(2) The institution's or holding company's board of directors, in good faith, determines in writing that the payment of such expenses will not adversely affect the institution's safety and soundness;

(3) At any time the institution's or holding company's board of directors believes, or should reasonably believe, that the conditions of paragraphs (a) (1) and (2) of this section are no longer being met, it ceases making or authorizing such payments;

(4) The indemnification payments are limited to the payment or reimbursement of reasonable legal or other professional expenses incurred in connection with an institution-affiliated party's involvement in an administrative proceeding or civil action instituted by the appropriate federal banking agency; but in no event shall such indemnification pay or reimburse an institution-affiliated party for the amount of, or any cost incurred in connection with, any settlement of any such claim, proceeding or action or any judgment or penalty imposed with respect to any such claim, proceeding or action;

(5) The institution-affiliated party agrees in writing to reimburse the institution for such indemnification payments in the event that the proceeding results in a final order under which the institution-affiliated party:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution; and

(6) The institution or holding company provides the appropriate federal banking agency and the FDIC with prior written notice of its board of directors' authorization of such indemnification.

(b) An institution-affiliated party requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; *provided, however,* that such institution-affiliated party may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the administrative proceeding or civil action.

By order of the Board of Directors, dated at Washington, DC, this 24th day of September, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-23747 Filed 10-4-91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1212

[NHTSA Docket No. 91-17; Notice 1]

RIN 2127-AE10

Drug Offender's Driver's License Suspension

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice of Proposed Rulemaking (NPRM) contains a proposal for implementing a new program enacted by the Department of Transportation and Related Agencies Appropriations Act for FY 1991. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense. This notice proposes the manner in which States would certify that they are not subject to this withholding, and the disposition of funds that are withheld. The agencies

request comments on the proposed regulation discussed in this notice.

DATES: Comments must be received by November 21, 1991.

ADDRESS: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. William Holden, Office of Alcohol and State Programs, Traffic Safety Programs, room 5130, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2722; or Ms. Heidi L. Coleman, Office of Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1834.

In FHWA: Mr. Warren Harper, Office of Highway Safety, Room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2172; or Mr. Wilbert Baccus, Office of Chief Counsel, room 4230, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–0780.

SUPPLEMENTARY INFORMATION: The Department of Transportation and Related Agencies Appropriations Act for FY 1991, Public Law 101–516, was signed into law on November 5, 1990. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act (Pub.L. 91–513, as amended) or any drug offense. If a State decides not to enact such legislation, the section stipulates a procedure by which the state can avoid the withholding of funds.

This notice proposes the manner in which States would certify that they are not subject to this withholding and the disposition of funds that are withheld.

Adoption of Drug Offender's Driver's License Suspension

The legislation specifically provides that the Secretary must withhold a portion of Federal-aid highway funds from any State that does not meet certain statutory requirements. To avoid such withholding, a State must have enacted and be enforcing a law that provides for the revocation or suspension of the driver's license of any individual who is convicted for any violation of the Controlled Substances Act or any drug offense. Alternatively, a State can avoid the withholding by submitting to the Secretary a written certification stating that the Governor is opposed to the enactment or enforcement of such a law and that the legislature has adopted a resolution expressing its opposition to such a law.

The requirements of the Commercial Motor Vehicle Safety Act of 1986 would remain unaffected by any such resolution. Specifically, a State may not waive the requirement of 49 CFR 383.51 that a person who is convicted of either driving a commercial motor vehicle (CMV) while under the influence of a controlled substance, or using a CMV in the commission of a controlled substance-related felony, be disqualified from operating a CMV for a period of from one year to life, depending on the specific offense(s), without facing a reduction in Federal-aid highway funds.

Any State that does not enact and enforce a law that provides for the revocation or suspension of the driver's license of drug offenders or submit to the Secretary written certification from the Governor that he or she is opposed to the enactment or enforcement of such a law in the State will be subject to withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if a State does not meet the statutory requirements by October 1, 1993, five percent of its FY 1994 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) shall be withheld. These sections relate to the apportionments for the primary, secondary, interstate (including interstate construction and interstate resurfacing, restoration, rehabilitation and reconstruction (4R) funds) and urban highway systems. Five percent will be withheld also in FY 1995 if the State does not meet the requirements by October 1, 1994. If the State does not meet the statutory requirements by October 1 of any subsequent fiscal year (beginning with FY 1996), ten percent of its Federal-aid highway apportionments under these sections will be withheld.

Compliance Criteria

To avoid the withholding of Federal-aid highway funds, a State has two alternatives, the first of which is to enact and enforce a law that meets the statutory criteria. Section 333 provides that:

A State meets the requirements of this paragraph if—

(a) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception—

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—

(I) Any violation of the Controlled Substances Act, or

(II) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted * * *

1. Statutory Definitions

The statute defines several terms, and the agencies are proposing to adopt these definitions. Section 333 defines the term "driver's license" to mean "a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways." This definition would encompass licenses that permit individuals to operate any type of motor vehicle, including motorcycles and commercial motor vehicles.

The term "drug offense" is also defined in the statute. The term, as defined in the statute, would cover any criminal drug offense including "the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or * * * the operation of a motor vehicle under the influence of such a substance." It should be noted that, while Section 333 requires that States take a driver's licensing action against violators of these drug offenses, the offenses covered by this definition are not limited to moving violations. In fact, to be covered, these offenses need not be motor vehicle-related at all.

The agencies do not believe that the Act requires a State to enact any particular drug offense law. The Act requires only that if a drug offense is proscribed and an individual is convicted for a violation of the offense that the State suspend, revoke or delay that individual's driver's license.

Since the statutory definition of "drug offense" includes manufacturing among the activities that are unlawful, the agencies believe this term should cover not only controlled and counterfeit substances but also listed chemicals, the possession of which was made unlawful by the Chemical Diversion and

Trafficking Act of 1988, Public Law 100–690. NHTSA and FHWA therefore propose to define the term "substance the possession of which is prohibited under the Controlled Substances Act" to mean "a controlled or counterfeit substance or a listed chemical as those terms are defined in subsections 102(6), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (21 U.S.C. 802(6), (7) & (33)). Complete listings of all controlled substances and listed chemicals are contained in 21 CFR 1308.11–.15 and 1310.02."

The statute provides that the term "convicted" includes "adjudicated under juvenile proceedings." In other words, the statute requires that State laws provide that juveniles who are adjudicated for drug offenses outside of criminal proceedings would also be subject to revocation or suspension of their driver's licenses. If these individuals do not have driver's licenses, then the State must delay issuance of driving privileges to them.

Several issues are left unresolved by the statutory language, and the agencies request comments from the public on these issues.

2. Compelling Circumstances

Section 333 provides that, to meet the statutory requirements, the State law must require the revocation, suspension or delay in issuance of driver's licenses for drug offenders "in all circumstances" or "in the absence of compelling circumstances warranting an exception." The statute does not specify what circumstances would warrant an exception.

NHTSA and FHWA believe that this language provides States with flexibility to issue restricted licenses to individuals in certain limited circumstances, but the agencies are not proposing to define for the States which circumstances would warrant an exception. When NHTSA originally promulgated its regulation implementing section 408 of the Highway Safety Act of 1966, Incentive Grant Criteria for Alcohol Traffic Safety Programs, the agency defined the particular conditions for which restricted or hardship licenses could be issued to drunk drivers. Over time, however, NHTSA found these conditions to be overly restrictive for the States and amended the regulation accordingly. Based on this experience, the agencies are not proposing to define in this regulation a limited set of conditions under which hardship or restricted licenses may be issued. However, hardship or restricted licenses should be issued only in exceptional circumstances specific to the offender.

3. Enforcement

Section 333 requires not only that States enact drug offender's driver's license suspension statutes, but also that they enforce such statutes. The Act does not explain, however, how States are to satisfy this enforcement requirement. The Senate Report for the measure states:

> The requirement * * * is satisfied so long as the State is attempting in good faith to enforce the law. If a State resident is convicted of a drug offense in another State, and officials of the State of residence are unaware of the conviction, the failure of the State of residence to revoke or suspend the offender's driver's license would not, by itself, be a sufficient basis to find the State of residence in noncompliance with the bill's requirements. Similarly, if State officials are unaware of the conviction of a resident under the Controlled Substances Act, the failure to revoke or suspend the resident's license is not, by itself, a sufficient basis to find the State in noncompliance. S.Rep.No. 298, 101st Cong., 1st Sess. 5 (1989).

The Senate Report further suggests that a State could show good faith efforts to enforce its law by entering into agreements with other States or with Federal officials to inform each other of drug offense convictions. The report indicates, however, that such agreements are not required by the Act. Id.

The agencies are proposing to require that, in order to comply with the enforcement criterion, States with qualifying laws must submit a description of the steps they are taking to enforce their law. The description would need to include the steps the State is taking to enforce its law with regard to within-State convictions, out-of-State convictions, Federal convictions and juvenile adjudications. We intend to accept good faith efforts, and are not mandating that States meet any particular condition as a prerequisite.

States would be able to show good faith in a number of ways. With regard to out-of-State and Federal convictions, for example, as suggested by the Senate Report, States could show good faith by entering into agreements with Federal officials and with other States to inform each other of drug offense convictions. Such agreements could be modeled after the Driver License Compact, under which States report convictions for major moving violations to a driver's home State.

In addition, States could establish procedures for submitting inquiries to the National Crime Information Center (NCIC) prior to issuing or renewing an individual's driver's license. The NCIC maintains the Interstate Identification Index (III), a nationwide computerized information system that contains criminal justice information, and includes both State and Federal drug offense conviction information. The agencies are aware that access to the NCIC/III is limited to criminal justice purposes. Because of this limitation, NHTSA and FHWA have requested an interpretation from the Assistant Director/Legal Counsel for the Federal Bureau of Investigation to determine whether State access to this information for the purpose of suspending, revoking or refusing a driver's license to a drug offender would be authorized.

4. Suspension, Revocation or Delay

Section 333 requires that States revoke or suspend for at least six months the driver's license of any individual who is convicted of the Controlled Substances Act or any drug offense. The statute is silent about the effect, if any, a prison term would have on the suspension or revocation. A drug offender, for example, may be sentenced to serve on year in prison. Must that individual be deprived of his or her driver's license for a least six months after the prison term is completed, or could the suspension or revocation period run concurrently with the term of imprisonment imposed?

The Drug Offender's Driving Privileges Suspension Act was enacted to deter drug offenders. If a drug offender serves at least six months in prison, the agencies believe such punishment provides a greater degree of deterrence than would the suspension or revocation of the individual's driver's license. NHTSA and FHWA therefore have tentatively determined that the license suspension or revocation term may run concurrently with any prison term imposed. if the offender serves less than six months in prison, of course, the full six month suspension or revocation would have to be completed.

If the individual does not have a driver's license or if the individual's driver's license is suspended at the time the individual is convicted, Section 333 requires that the State law must provide for a delay in the issuance or reinstatement of the individual's driver's license for at least six months after the individual applies for issuance or reinstatement of his or her driver's license. The statute seems to provide that the six month period would not begin to run until the individual initiates the issuance or reinstatement process by submitting an actual application. The agencies request comments, particularly from the States, regarding whether this would impose unnecessary burdens for driver licensing operations, and if there

is a preferable method for marking the beginning of the six month period within the meaning of the statute. For example, we request comments on whether it would be preferable to require the issuance or reinstatement of the individual's driver's license be preferable to require that issuance or reinstatement of the individual's driver's license be delayed for at least six months after the individual otherwise would have been eligible to have his or here driver's license issued or reinstated. NHTSA and FHWA have tentatively determined that, like the license suspension or revocation term, the period of delay may run concurrently with any prison term imposed.

5. Certification

To avoid the withholding of Federal-aid highway funds, each State would be required by this proposed regulation to submit a certification on a annual basis. Under the agencies' proposal, States would be required to submit their certifications by April 1, 1993 to avoid the withholding of funds in fiscal year 1994. Thereafter, States would be required to submit certifications by January 1 of each year (beginning with January 1, 1994) to avoid the withholding of funds in the following fiscal year (beginning with FY 1995). States could submit their certifications along with their Certifications of Speed Limit Enforcement, which are required to be submitted annually in accordance with 23 CFR Part 659.

The certifications submitted under the Part would provide the agencies with the basis for finding States in compliance with the Drug Offender's Driver's License Suspension requirements. Accordingly, until a State has been determined to be in compliance with these requirements, the agencies are proposing that the certification must consist of a certifying statement and also supporting documentation. Once a State has been determined to be in compliance with the Drug Offender's Driver's License Suspension requirements, the State would then be required to submit a certifying statement, but would no longer be required to submit supporting documentation, unless the State's law or enforcement efforts have changed significantly enough so as to warrant an amendment of the State's supporting material.

For example, if a State believes that it has a law that revokes or suspends the driver's license of drug offenders in conformance with the statutory and regulatory requirements, the State would be required to submit a certifying statement to this effect. With the certification, the State would be required to submit a copy of its conforming law and, as discussed earlier, a description of the steps the State is taking to enforce the law. Once the State is determined to be in compliance, the State would be required to submit only the certifying statement. It would not be required to resubmit its law or describe again its enforcement efforts. If the State's law or its enforcement efforts were to change significantly, the State would be required to amend or supplement the State's original submission.

If a State has not enacted or is not enforcing a conforming law, it can avoid the withholding of funds by submitting, not earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification signed by the Governor stating that he or she is opposed to the enactment or enforcement in the State of a drug offender's driver's license suspension law. The Governor would also be required to submit written certification that the legislative (including in both Houses where applicable) has adopted a resolution expressing its opposition to such a law and a copy of the resolution. Once the State is determined to be in compliance, the State would be required to submit only the Governor's certifying statement. The State legislature would not be required to pass a resolution each successive year, and the State would not be required to resubmit a copy of the resolution.

Notification of Compliance

For each fiscal year beginning with FY 1994, NHTSA and FHWA propose to notify States of their compliance or noncompliance with Public Law 101–516, based on a review of certifications received. The agencies propose that this notification will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to Public Law 101–516 and the implementing regulation, the agencies will make an initial determination that the State is in noncompliance. States that are determined to be in noncompliance with Public Law 101–516 will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

Each State determined not to comply will have an opportunity to rebut the initial determination. These States will be notified of the agencies' final determination of compliance or noncompliance as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

NHTSA and FHWA recognize that States may want to know as soon as possible whether their laws satisfy the requirements of Public Law 101–516 or they may want assistance in drafting conforming legislation. States are encouraged to request preliminary reviews and assistance from NHTSA's or FHWA's Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. They are encouraged also to request assistance from NHTSA and FHWA regional offices.

Period of Availability for Funds

Section 333 provides an incremental approach to the withholding of funds for noncompliance with Public Law 101–516. If a State is found to be in noncompliance in fiscal years 1994 or 1995, the State would be subject to a five percent withholding. If a State is found to be in noncompliance in any subsequent fiscal year, beginning with FY 1996, the State would be subject to a ten percent withholding.

In addition, if a State is found to be in noncompliance in fiscal years 1994 or 1995, the funds withheld from apportionment to the State would remain available for apportionment to that State for a period of time, prescribed in the statute. If a State is found to be in noncompliance in any subsequent fiscal year, the funds withheld from apportionment would no longer be available for apportionment.

Paragraph 104(b)(1)(B) of the Section provides that, "No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State." The disposition of these funds would be made in accordance with paragraph 104(b)(4) of the section.

Paragraphs 104(b)(1)(A) and (b)(2) of the section identify the period of time during which funds withheld on or before September 30, 1995, remain available for apportionment, and when they are to be restored if the State complies with the Federal requirements before the funds lapse. Paragraph 104(b)(3) establishes the period of time during which these subsequently apportioned funds would remain available to a State for expenditure. If the withheld funds lapse before they are restored, their disposition would be made in accordance with paragraph 104(b)(4) of the section.

These sections are virtually identical to those found in the National Minimum Drinking Age Act, as amended, 23 U.S.C. 158. For a full discussion of how these provisions have been applied in practice, interested parties are encouraged to read the agencies' joint final rule published in the **Federal Register** on August 18, 1988 (53 FR 31318).

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by November 21, 1991. The agencies have not provided a longer comment period in order to provide States with sufficient time to prepare their agendas for their upcoming legislative sessions. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and FHWA will mail copies to all Governors, Governors' Representatives for Highway Safety and State highway agencies.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

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

Copies of all comments will be placed in Docket 91–17; Notice 1 of the NHTSA Docket Section in room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

On April 29, 1991, the State of Alaska submitted some questions to FHWA regarding the agency's interpretation of section 333. FHWA acknowledged receipt of these questions, but declined to answer them since the agencies were in the process of developing this proposed regulation. We believe the questions raised in Alaska's inquiry have all been addressed in this NPRM. The questions have been placed in the public docket for his rulemaking action, and are available for public examination.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it would have no federalism implication that warrants the preparation of a federalism assessment. States can choose to enact and enforce a law that requires the suspension or revocation of driver's licenses for drug offenders in conformance with Public Law 101–516, and thereby avoid the withholding of Federal-aid highway funds. Alternatively, States can choose not to enact and enforce this type of law, and still avoid such withholding. To avoid the withholding of funds in such cases, the Governor would submit a certification that he or she is opposed to the enactment or enforcement in the State of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. While specific criteria that State laws must meet have been proposed in this NPRM, they are mandated by Public Law 101–516.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures. A preliminary regulatory evaluation of the impacts of this proposal has been prepared and placed in Docket 91–17; Notice 1. This preliminary evaluation provides information regarding the expected costs and benefits of the agencies' proposal and requests information demonstrating that license suspensions or revocations for drugged driving or illegal possession convictions deter drug use or reduce driver's future involvement in crashes. It also requests comments on methods that States could use and the costs to develop systems for providing Federal, out-of-State and juvenile records to State Departments of Motor Vehicles. Any interested person may obtain a copy of this preliminary evaluation by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949. Comments should be submitted to the NHTSA Docket, in accordance with the procedures described earlier in this notice.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this proposed rule on small entities. Based on the evaluation, we certify that this rule would not have a significant economic impact on a substantial number of small entities. Any withholding of funds under the regulation would be from States. Accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this proposal that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, the reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under DOT No.: 3517; OMB No.: New; Administration; NHTSA, NEED FOR INFORMATION: To encourage States to enact and enforce drug offender's driver's license suspension; PROPOSED USE OF INFORMATION: To provide procedures to State highway construction grant recipients on how to certify compliance with the provision of Public Law 101–516. The law requires a driver's license suspension, or revocation, for individuals convicted of any drug-related offense; FREQUENCY: Annual; BURDEN ESTIMATE: 260 hours; RESPONDENTS: State/local government; FORM(S): None, but Forms HS–62, HS–62A and HS–217 may be used, OMB No. 2127–0003; AVERAGE BURDEN HOURS PER RESPONDENT: 5 hours. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

The agencies have also analyzed this proposed action for the purpose of the

National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

List of Subjects in 23 CFR Part 1212

Driver licensing, Drugs, Highway safety.

In accordance with the foregoing, the agencies propose to add a new part 1212 to title 23 of the Code of Federal Regulations to read as follows:

PART 1212—DRUG OFFENDER'S DRIVER'S LICENSE SUSPENSION

Sec.

1212.1 Scope.
1212.2 Purpose.
1212.3 Definitions.
1212.4 Adoption of Drug Offender's Driver's License Suspension.
1212.5 Certification Requirements.
1212.6 Period of Availability of Withheld Funds.
1212.7 Apportionment of Withheld Funds After Compliance.
1212.8 Period of Availability of Subsequently Apportioned Funds.
1212.9 Effect of Noncompliance.
1212.10 Procedures Affecting States in Noncompliance.

Authority: Public Law 101–516; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1212.1 Scope.

This part prescribes the requirements necessary to implement section 333 of Public Law 101–516, which encourages States to enact and enforce Drug Offender's Driver's License Suspensions.

§ 1212.2 Purpose.

The purpose of this part is to specify the steps that States must take in order to avoid the withholding of Federal-aid highway funds for noncompliance with section 333 of Public Law 101–516.

§ 1212.3 Definitions.

As used in this part:

(a) Convicted includes adjudicated under juvenile proceedings.

(b) *Driver's license* means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(c) *Drug offense* means:

(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

(2) The operation of a motor vehicle under the influence of such a substance.

(d) *Substance the possession of which is prohibited under the Controlled Substances Act* or *substance* means a controlled or counterfeit substance or a listed chemical, as those terms are defined in subsections 102 (6), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802 (6), (7) & (33)) and listed in 21 CFR 1308.11–.15 and 1310.02.

§ 1212.4 Adoption of Drug Offender's Driver's License Suspension.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal years 1994 and 1995 if the State does not meet the requirements of this section on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal year 1996 and any subsequent fiscal year if the State does not meet the requirements of this section on that date.

(c) A State meets the requirements of this section if:

(1) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of

(A) Any violation of the Controlled Substances Act, or

(B) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

(2) The Governor of the State:

(i) Submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification stating that he or she is opposed to the enactment or enforcement in the State of a law described in paragraph (c)(1) of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) Submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in paragraph (c)(1) of this section.

§ 1212.5 Certification requirements.

(a) Each State shall certify to the Secretary of Transportation by April 1, 1993 and by January 1 of each subsequent year that it meets the requirements of section 333, Public Law 101–516 and this regulation.

(b) If the State believes it meets the requirements of section 333 of Public Law 101–516 and this regulation on the basis that it has enacted and is enforcing a law that suspends or revokes the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that the State has enacted and is enforcing a Drug Offender's Driver's License Suspension law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a Drug Offender's Driver's License Suspension law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101–516 and this regulation, the certification shall include also:

(i) A copy of the State law, regulation, or binding policy directive implementing or interpreting such law or regulation relating to the suspension, revocation, issuance or reinstatement or driver's licenses of drug offenders, and

(ii) A statement describing the steps the State is taking to enforce its law with regard to within State convictions, out-of-State convictions, Federal convictions and juvenile adjudications.

(c) If the State believes it meets the requirements of section 333 of Public Law 101–516 on the basis that it opposes a law that requires the suspension, revocation or delay in issuance or reinstatement of the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that he or she is opposed to the enactment or enforcement of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do

hereby certify that I am opposed to the enactment or enforcement of such a law and that the legislature of the (State or Commonwealth) of _____, has adopted a resolution expressing its opposition to such a law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101–516 and this regulation, the certification shall include also a copy of the resolution.

(d) The Governor, or an official designated by the Governor, each year shall submit the original and four copies of the certification to the local FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward two copies each to the Regional Administrator of NHTSA and FHWA. The Regional Administrators shall each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington Headquarters, attention of the Chief Counsel.

(e) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded, State legislative changes or changes in State enforcement activity shall be submitted in the same manner as the original.

§ 1212.6 Period of availability of withheld funds.

(a) Funds withheld under § 1212.4 from apportionment to any State on or before September 30, 1995, will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), 104(b)(2) or 104(b)(6) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1212.4 from apportionment to any State after September 30, 1995 will not be available for apportionment to the State.

§ 1212.7 Apportionment of withheld funds after compliance.

Funds withheld under § 1212.4 from apportionment, which remain available for apportionment under § 1212.5(a), will be made available to any State that conforms to the requirements of § 1212.4 before the last day of the period of availability as defined in § 1212.5(a).

§ 1212.8 Period of availability of subsequently apportioned funds.

(a) Funds apportioned pursuant to § 1212.7 will remain available for expenditure as follows:

(1) Funds originally apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds originally apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1212.7 and not obligated at the end of the periods defined in § 1212.8(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.9 Effect of noncompliance.

If a State has not met the requirements of section 333 of Public Law 101–516 at the end of the period for which funds withheld under § 1212.4 are available for apportionment to a State under § 1212.6, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.10 Procedures affecting states in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with section 333 of Public Law 101–516, based on NHTSA's and FHWA's preliminary review of its statutes, will be advised of the funds expected to be withheld under § 1212.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with section 333 of Public Law 101–516 based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(c) Every fiscal year, each State determined not to be in compliance with section 333 of Public Law 101–516, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1212.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 1, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 91–23991 Filed 10–4–91; 8:45am]

BILLING CODE 4910–59–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 409

[BPD–626–P]

RIN: 0938–AE34

Medicare Program; "Confined to the Home" Requirements for Home Health Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current Medicare rules to clarify when a home health patient would be considered "confined to the home" in order to receive home health benefits. It would conform our regulations to changes made by section 4024 of the Omnibus Budget Reconciliation Act of 1987.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 6, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–626–P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD–626–P. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: John J. Thomas 301–966–4623.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Home health services are provided to the elderly and disabled under the Hospital Insurance (Part A) and the Supplemental Medical Insurance (Part B) benefits of the Medicare program. They include an array of services that generally must be furnished by a Medicare-participating home health agency (HHA) on a visiting basis in a beneficiary's home, and include the following:

- Part-time or intermittent skilled nursing care furnished by or under the supervision of a registered nurse.
- Physical, occupational, or speech therapy.
- Medical social services under the direction of a physician.
- Part-time or intermittent home health aide services.
- Medical supplies (other than drugs and biologicals) and durable medical equipment.
- Services of interns and residents when the HHA is owned by or affiliated with a hospital that has an approved medical education program.

The exception to the requirement that services be furnished in the beneficiary's home is for those services that require the kinds of equipment that cannot readily be made available in the home and are furnished under arrangement with an HHA in a hospital, skilled nursing facility, or rehabilitation agency.

B. Legislative Provisions

In order for any home health service to be covered under Medicare, specific statutory requirements must be met. Section 1814(a)(2)(C) of the Social Security Act (the Act) provides "conditions" for payment under Part A for home health services and section 1835(a)(2)(A) of the Act provides "procedures" for payment under Part B for home health services. Both sections require that a physician certify that a beneficiary is under a physician's care, under a plan of care established and periodically reviewed by a physician, and confined to the home; and is in need of skilled nursing care on an intermittent basis, or physical therapy or speech therapy, or has a continuing need for occupational therapy that was started when the beneficiary needed skilled nursing care on an intermittent basis, or physical or speech therapy.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987, (Pub. L. 100–203) was enacted. Section 4024 of Pub. L. 100–203 amends section 1814(a) of the Act for Part A services and section 1835(a) of the Act for Part B services by adding the following:

> an individual shall be considered to be "confined to his home" if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered "confined to his home", the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.

C. Current Regulations

The regulations implementing the statutory provisions governing the coverage of home health benefits under Part A are located at 42 CFR 409.40 through 409.46. Those rules specify the services included under the benefit as well as the limitations and exclusions that apply. Specifically, § 409.42 states that for home health services to be covered, the beneficiary must (among other requirements) be "confined to the home or in an institution that is neither a hospital nor primarily engaged in providing skilled nursing or rehabilitation services". The current regulations do not specify what is meant by "confined to the home".

The regulations governing the coverage of home health benefits under Part B are located at 42 CFR 410.80. Section 410.80 states that the coverage rules under Part A (§§ 409.40 through 409.46) apply to Part B as well.

II. Provisions of the Proposed Rule

This proposed rule would implement sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act, and the last two sentences, respectively, of sections 1814(a) and 1835(a), as amended by section 4024 of Public Law 100–203, by revising 42 CFR 409.42(b).

In proposed § 409.42(b), we state the requirement that to qualify for Medicare coverage of home health services a beneficiary must be confined to his or her home or an institution or facility that does not meet the definition of a hospital, skilled nursing facility (SNF), or nursing facility (NF) as described in sections 1861(e)(1), 1819(a), or 1919(a) of the Act, respectively. If the beneficiary is confined to a hospital or to a facility that is primarily engaged in furnishing nursing care or rehabilitation services, skilled services are provided as part of the institutional stay. Thus, to cover home health care for a beneficiary who is confined to a facility that routinely offers the very care the beneficiary would receive under the home health benefit would be duplicative. Furthermore, the beneficiary would not meet the statutory requirement that the beneficiary be confined to the home.

Although it is a longstanding Medicare policy to exclude home health services furnished to residents of hospitals and nursing facilities, we believe that the regulations currently in effect are not sufficiently specific in their definition of these facilities. Therefore, we added the statutory definitions of these facilities to this longstanding requirement to clarify which institutions are to be excluded from the definition of "home" and to promote uniformity in coverage decisions.

Section 409.42(b) would also consider the beneficiary's condition in determining whether he or she is "confined to the home." Specifically, we would require the condition of the beneficiary to be such that there exists a normal inability to leave home, and that leaving home would require a considerable and taxing effort by the beneficiary. We expect the regional home health intermediaries to continue to make "homebound" determinations based on information that is provided on the HCFA 485 (Plan of Treatment) and HCFA 486 (Medical Update and Patient Information) forms, as is done currently. We do not intend that the intermediaries would conduct any special investigation or routinely require any additional documentation to ensure compliance with this regulation.

We believe Congress originally included the "confined to the home" requirement in order to ensure that the home health benefit not be used as a convenience to beneficiaries who prefer to receive health care in their homes when they can leave their homes to acquire the skilled care they need. (See S. Rep. No. 404, 89th Cong., 1st. Sess. 32 (1965); H.R. Rep. No. 213, 89th Cong., 1st Sess. 29 (1965).)

Based on this intent, we have historically focused our determination of whether a beneficiary is confined to the home on the medical or physical problem that causes the beneficiary to be unable to leave the home to acquire needed skilled care. Hence, our guidelines, as contained in section 3117.1 of the Medicare Intermediary Manual (HCFA Pub. 13) and section 204.1 of the Medicare Home Health Agency Manual (HCFA Pub. 11), generally have two tests:

- Is the beneficiary confined to the home (that is, does he or she not go out regularly or frequently)?
- Is the reason for the confinement a medical or physical reason (for example, use of a wheelchair or need for special transportation)?

In section 40-24 of Pub. L. 100–203, Congress reaffirmed our longstanding guidelines by including them, with minor modifications, as requirements for determining when a beneficiary is confined to the home. Page 408 of the Report of the Committee on the Budget, House of Representatives, that accompanied H.R. 3545 states that these longstanding guidelines "have proven to be generally satisfactory in helping home health agencies and fiscal intermediaries determine Medicare eligibility for home health benefits." (H.R. Rep. No. 391, 100th Cong., 1st Sess. 408 (1987)).

In enacting section 4024 of Public Law 100–203, Congress did not intend to substantially revise these longstanding guidelines, as is indicated on pages 408–409 of the Report cited above. Congressional intent was to enact a statutory definition of "confined to the home" that would promote clarity and uniformity in coverage determinations of whether a beneficiary is "confined to the home." Congress also intended to create a definition that was consistent with the original intent of Congress when the homebound rule was established as part of the Medicare statute. The Committee states, on page 408 of the Report, that:

> the clear Congressional intent in establishing the rule was to ensure that individuals seeking home health benefits are, in fact, homebound and unable to leave their residences, except with significant difficulty and only for short periods of time.

We believe that this proposed regulation is necessary because of the need to achieve consistency in "homebound" determinations among Medicare contractors and to improve the clarity of Medicare home health eligibility criteria. This rule would establish objective standards for the determination of homebound status that can be clearly understood and interpreted by contractors, home health agencies, and Medicare beneficiaries alike. This clarity of standards is necessary both to ensure consistency of claims determinations and to make the Medicare home health benefit eligibility criteria more easily understandable to Medicare beneficiaries.

At § 409.42(b)(1), we would specify that the beneficiary would be considered to be "confined to the home" if the individual has a condition, due to an illness or injury, that restricts the ability of the beneficiary to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the beneficiary has a condition such that leaving his or her home is medically contraindicated. An individual's ability to relax on the porch or in the yard of his or her home would not, of course, adversely affect his or her "homebound" status. These components of the requirements are derived directly from the statute at sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act.

To clarify normal inability to leave the home, we propose in 490.42(b)(2) to limit a beneficiary's absence from the home, for purposes other than to receive medical treatment that cannot be furnished in the home, to an average number of hours per calendar month.

We believe this proposed requirement meets the intent of Congress. In the Report that accompanied H.R. 3545 (H.R. Rep. No. 391, 100th Cong. 1st Sess. 409 (1987)), the Committee stated that:

> Qualified beneficiaries could also leave home for such non-medical purposes as an infrequent family dinner, an occasional drive or walk around the block, or a church service and still fulfill the homebound requirements * * *

It is our belief that a requirement allowing non-medical absences from the home for up to an average number of hours per month would provide ample opportunity for a beneficiary to participate in the kind of pursuits envisioned by Congress, while still ensuring that Medicare home health beneficiaries are, in fact, homebound. We are considering adopting an average number of hours in the range of 10 to 16 hours per month. We ask for comment on the appropriateness of this range, and we will select the appropriate number of hours in response to public comments.

We have expressed this, and other requirements, as averages to allow latitude in unusual circumstances when absences in a particular month may exceed the average (for example, because of the death or illness of a spouse or other family member, or a family celebration). We anticipate that this requirement could present some difficulty for beneficiaries residing in rural areas, where travel may require more time than it does in urban areas. We specifically request comments as to whether, for example, travel time should be excluded from the calculation of hours spent absent from the home.

In § 409.42(b)(3) we state that we would consider the nature or frequency of absences from the home in determining whether the beneficiary is "confined to the home". Specifically, this section would specify that to be considered "confined to the home", the beneficiary may not leave home unless the absences are infrequent or of short duration or are to receive medical treatment that cannot be furnished in the beneficiary's home. These components of the requirements are also derived directly from the last two sentences, respectively, of sections 1814(a) and 1835(a) of the Act. We believe that, given the legislative history of these provisions, it is the intent of Congress that the beneficiary's condition and the frequency or nature of absences from the home be considered in determining whether the beneficiary is "confined to the home".

Specifically, on page 409 of the 1987 Report cited above, the Committee indicated that:

> In order to correct these misinterpretations of the homebound rule and to clarify its meaning, the Committee amendments would define the term "confined to the home" to include any otherwise qualified individual who (a) has a condition due to an illness or injury that restricts his or her ability to leave home without the assistance of another individual or the aid of a supportive device, or (b) has a condition such that leaving the home is medically contraindicated. Thus, the amendments would allow beneficiaries to leave their homes—for both medical and non-medical purposes—and still meet the homebound requirement. As the amendments also set forth, however, these absences must be infrequent and of short duration and must entail considerable effort on the part of the beneficiary in order for eligibility to be maintained.

We believe that it is, therefore, the intent of Congress that the definition of "confined to the home" address both the condition of the beneficiary and, if there are absences from the home when the criteria relating to the beneficiary's condition are met, the nature or frequency of those absences.

At § 409.42(b)(3)(i)(A), we propose to define "infrequent" as an average of five absences or fewer per calendar month. HHAs and intermediaries have, from time to time, asked how frequently a beneficiary may leave the home and still be considered to be "confined to the home". We believe that this question is significant enough to warrant inclusion of an answer in these regulations. Moreover, we believe that a beneficiary who leaves home only an average of five or fewer times in a calendar month (excluding absences to receive medical treatment that cannot be furnished in the home as discussed below) should still be considered to be confined to the home. An average of five absences or fewer per calendar month would still enable a beneficiary to attend church regularly, or to attend an infrequent family dinner. We request public comment on the proposed definition for "infrequent".

HHAs and intermediaries have also asked how many hours a beneficiary may be absent from the home and still be considered to be "confined to the home". We believe that this issue is also significant enough to warrant inclusion of an answer in these regulations. Therefore, at § 409.42(b)(3)(i)(B), we propose to define "short duration" as being an average of no more than 3 hours per absence from the home in a calendar month. We believe that this definition is reasonable, and that the use of an average would provide latitude in unusual circumstances. An average of 3 hours per absence would generally enable a beneficiary to undertake the activities that Congress (as evidenced by the Committee Report cited above) foresees as permissible absences from the home (for example, occasional meals out, religious attendance). We also specifically request public comment on the proposed definition of "short duration".

In determining these definitions of "infrequent" and "short duration", we sought to establish thresholds that will allow for participation in the activities mentioned by Congress in the previously cited committee report. We also sought to establish thresholds that are consistent with current intermediary practices, so as to avoid reducing the number of beneficiaries who are considered to be "confined to the home". Our goal is to arrive upon definitions that embody the intent of Congress while enhancing the consistency of coverage decisions by quantifying the eligibility rules that the intermediaries currently apply. It is our expectation that the implementation of this rule will neither increase nor decrease significantly the number of individuals that are determined to be "confined to the home", and we will evaluate comments with this objective in mind.

To determine these definitions, we contacted a number of regional home health intermediaries to discuss their approach to making "homebound" determinations. We then asked them to quantify in specific terms the thresholds that they would consider to appropriately define the terms "infrequent," "short duration", and "normal inability to leave the home" as they are currently applied. Although the intermediaries do not currently use specific definitions of these terms and do not maintain statistics as to these issues, they were able to estimate thresholds that they believe parallel their current policies (that is, individuals who exceed the proposed thresholds are found to not be homebound under the current system). After these discussions, we analyzed the estimates of current practice to determine specific definitions that can be fairly applied on a national basis while also allowing for beneficiary participation in the types of activities envisioned by Congress. We believe that the definitions proposed in this regulation will serve to enhance the consistency of Medicare claims determinations while preserving the intent of Congress to allow beneficiaries the freedom to participate in certain activities without the fear of being found ineligible for Medicare home health coverage. We also believe that, due to the process by which we determined the proposed definitions, the elements of this regulation can be implemented with little or no disruption to current intermediary operations.

In addition, the increased uniformity in coverage decisions that we anticipate would result from this rule would address congressional concern about misinterpretation of the homebound rule and the desire to clarify its meaning, as expressed in the Committee Report cited above.

As indicated, sections 1814(a) and 1835(a) of the Act permit absences from the home for medical treatment in determining whether a beneficiary is considered to be "confined to the home". This proposed rule would require at § 409.42(b)(3)(ii) that these medical absences from the home be limited to absences to receive treatment that cannot be furnished in the home. We believe that Congress intended that absences from the home to receive medical treatment would occur only if the beneficiary "must" leave the home to receive the treatment. Specifically, on page 409 of the Report cited above, the Committee indicated that:

> under this definition, beneficiaries who 'must' leave home to receive medical treatment such as radiation therapy, renal dialysis, or physical therapy 'and' who cannot do so without significant assistance are "homebound" for the purposes of determining eligibility for Medicare home health benefits * * *. (Quotation marks added for emphasis.)

We believe that this demonstrates the intent of Congress that only when the beneficiary "must" leave the home to receive medical treatment and does so with considerable and taxing effort, is the patient to be considered "confined to the home" despite these absences. Thus, the fact that a beneficiary leaves home for the sole purpose of receiving medical treatment that could otherwise be provided in the home would make the beneficiary ineligible to be considered homebound.

This proposed requirement is further supported by section 1861(m)(7) of the Act, which requires that covered home health items and services be provided in an individual's place of residence, except for those items or services which: (a) Involve the use of equipment of such a nature that they cannot readily-be made available at the individual's place of residence; or (b) are furnished at a hospital, skilled nursing facility or rehabilitation facility while the individual is there to receive an item or service described in (a).

We believe this demonstrates the intent of Congress to allow absences from the home to receive medical treatment only in those circumstances in which the beneficiary must leave the home (with considerable and taxing effort) because it is not possible to receive the medical treatment in the beneficiary's residence.

HHAs and intermediaries have also asked how we would define "medical treatment". In § 409.42(b)(2)(ii), we are proposing to define "medical treatment" as meaning any services that are furnished by a physician or, if not furnished by a physician are—

- Furnished based on and in conformance with a physician's order;
- Furnished by or under the supervision of a licensed health professional; and

• For the purpose of diagnosing or treating an illness or injury.

We have also taken this opportunity to make some clarifying and renumbering changes to the regulations at §§ 409.42(c)–(g). No substantive changes have been made.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

• An annual effect on the economy of $100 million of more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would conform our regulations to the amendments enacted by section 4024 of Public Law 100–203. It would revise the current Medicare rules to specify when a home health patient would be considered "confined to the home" in order to be eligible to receive home health benefits.

The only area in which we are exercising administrative discretion is in defining the phrase "infrequent or of relatively short duration" (as specified in the last sentences, respectively, of sections 1814(a) and 1835(a) of the Act) for purposes of a home health patient who would be considered to be "confined to the home".

We do not believe that the definitions proposed in this regulation would present a negative incentive to the families and caregivers of Medicare home health beneficiaries. We anticipate some concern about whether implementation of the proposed definitions would discourage family and caregivers from including home health beneficiaries in family outings or other non-medical trips from home. However, after considering this issue, we have concluded that the institution of specific definitions in the "homebound" requirement would primarily serve to enhance caregiver, family, and patient understanding of the specific eligibility requirements for Medicare home health coverage. Concern about the need to assure that a patient is considered "homebound" already exists. The introduction of specific standards to describe "homebound" status should serve to help people in making decisions about activities, thus allaying concern.

We believe that if all parties understand the specific provisions of Medicare eligibility requirements, they would not be burdened by the uncertainty they may now experience under the current, more vague, requirements. In short, if families and caregivers clearly understand the Medicare definition of "confined to the home", then they need not worry that a patient's weekly religious attendance or other absences from the home that are infrequent or of short duration would disqualify the patient from Medicare coverage of home health services. In addition, we have been careful to express all definitions in terms of averages, so that a patient may occasionally be absent for periods of time that exceed those contained in the definition without being found ineligible to receive Medicare coverage of home health care.

As stated in section II of the preamble, we propose to define "infrequent" as being an average of five or fewer absences per calendar month, excluding absences to receive medical treatment that cannot be furnished in the home. We propose to define "short duration" as being an average of 3 or fewer hours per absence from the home within a calendar month. The proposed regulation clarifying "normal inability to leave the home", at § 409.42(b)(1), also includes the limitation that the beneficiary's absence from the home for purposes other than to receive medical treatment that cannot be furnished in the home may not exceed on average a total of more than (10 to 16 hours, to be determined on the basis of public comments) per calendar month. We believe that these definitions along with a limit per month (within the 10 to 16 hour range proposed) are reasonable and meet congressional intent.

The proposed regulations which define the terms "infrequent" and "short duration" would promote uniformity in coverage determinations by HHAs. We believe there may be some beneficiaries who would be eligible to receive benefits under this proposal who are currently being denied benefits due to an intermediary's particular interpretation of current policy as contained in the Home Health Agency Manual, section 204.1A dated April 1989. We do not have data that would allow us to calculate the additional program costs, but because we believe the additional number of beneficiaries who would qualify for benefits is small, the additional cost to the Medicare program would be negligible. We specifically request public comment on this expectation.

For the reasons cited above, we believe this proposed rule does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this proposed rule is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals are not considered small entities. HHAs would be considered small entities.

As stated in Section A of this Impact Statement, the effects of these proposed regulations would primarily be the result of the amendments enacted by section 4024 of Public Law 100–203 and not this proposed rule. For purposes of the RFA, we believe that the proposed rule may have some effect on HHAs by increasing the number of beneficiaries eligible to receive services. Under current regulations, claims for home health services may have been denied due to an intermediary's particular interpretation of homebound status in situations involving individuals who have left home (with considerable assistance) to receive medical services. The proposed rule would specify when beneficiaries could leave their homes—for both medical and non-medical purposes—and still meet the "confined to home" requirement. However, we believe that any effects would be negligible since we anticipate that the application of these definitions would result in only a slight increase in demand for covered services because of the small number of additional beneficiaries who would be considered "confined to the home".

Therefore, we have determined and the Secretary certifies that this proposed rule would not result in a significant impact on a substantial number of small entities and we are not preparing a regulatory flexibility analysis.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a

small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and we will respond to the comments in the preamble of the final rule.

V. Information Collection Requirements

These proposed regulations do not impose information collection and recordkeeping requirements. Consequently, they need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 42 CFR Part 409

Health facilities, Medicare.

For the reasons set forth in the preamble, 42 CFR part 409, Subpart E is proposed to be amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

Subpart E—Home Health Services Under Hospital Insurance

1. The authority citation for part 409, is revised to read as follows:

Authority: Secs. 1102, 1812, 1813, 1814, 1835, 1861, 1862(h), 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395f, 1395n, 1395x, 1395y(h), 1395hh and 1395rr).

2. Section 409.42 is revised to read as follows:

§ 409.42 Requirements and conditions for home health services.

(a) *Basic rule.* The services specified in § 409.40 are covered by Medicare Part A only if the requirements of paragraphs (b) through (g) of this section are met.

(b) *Confined to the home.* The beneficiary must be confined to his or her home or an institution or facility that does not meet the definition of a hospital, SNF, or nursing facility as described in sections 1861(e)(1), 1819(a), or 1919(a) of the Act, respectively. The beneficiary does not need to be totally bedridden to be considered "confined to the home." The beneficiary must have a condition such that there exists a normal inability to leave the home, and that leaving the home requires a considerable and taxing effort by the beneficiary.

(1) The beneficiary must have a condition due to an illness or injury that restricts the beneficiary's ability to leave the home—

(i) Without the assistance of another individual;

(ii) Without the assistance of supportive devices such as crutches, a cane, a wheelchair or a walker; or

(iii) Because an absence from the home is medically contraindicated.

(2) The beneficiary must have a condition due to an illness or injury that restricts the beneficiary's ability to leave the home for more than an average of (from 10 to 16 hours, to be determined on the basis of public comments) per calendar month for purposes other than to receive medical treatment that cannot be provided in the home.

(3) The beneficiary may be considered confined to the home if he or she leaves the home in either of the following circumstances:

(i) Absences from the home are infrequent or of short duration.

(A) *Infrequent* means an average of five or fewer absences per calendar month, excluding absences to receive medical treatment that cannot be furnished in the home.

(B) *Short duration* means an average of 3 or fewer hours per absence from the home within a calendar month excluding absences to receive medical treatment that cannot be furnished in the home.

(ii) Absences from the home are attributable to the need to receive medical treatment that cannot be furnished in the home. *Medical treatment* means any services that are furnished by a physician or furnished—

(A) Based on and in conformance with a physician's order;

(B) By or under the supervision of a licensed health professional; and

(C) For the purpose of diagnosis or treatment of an illness or injury.

(c) *Under the care of a physician.* The beneficiary must be under the care of a physician who is a doctor of medicine, osteopathy, or podiatric medicine.

(d) *Qualifying services.* The beneficiary must be in need of intermittent skilled nursing care or physical or speech therapy or occupational therapy. After November 30, 1981, need for occupational therapy is not a basis for initial qualification for home health services but does qualify a beneficiary for continued home health services even after he or she no longer needs intermittent skilled nursing care or physical or speech therapy.

(e) *Plan of treatment requirements.* The home health services must be furnished under a plan of treatment that is established and periodically reviewed by a doctor of medicine, osteopathy or, podiatric medicine. A doctor of podiatric medicine may establish a or continuing plan of treatment only if that is consistent with the home health agency's policy and with the functions he or she is authorized to perform under State law.

(f) *Where the services must be furnished.* (1) The home health services must be furnished—

(i) On a visiting basis in the individual's home; or

(ii) On an outpatient basis in a hospital, SNF, or rehabilitation center that meets State and local health and safety standards, if it is necessary to use equipment that cannot readily be made available in the home.

(2) If an individual is brought to a facility in accordance with paragraph (f)(1)(ii) of this section, other services that could be furnished in the home may be furnished in the facility at the same time.

(g) *By whom the services must be furnished.* The home health services must be furnished by, or under arrangements made by a participating HHA.

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance)

Dated: February 16, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: February 4, 1991.

[FR Doc. 91-24054 Filed 10-4-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-279, RM-7808]

Radio Broadcasting Services; Belle Plaine, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Belle

Plaine Broadcasters, Inc., requesting the allotment of Channel 224C3 to Belle Plaine, Kansas, as that community's first FM broadcast service. The coordinates for Channel 224C3 are 37–20–15 and 97–27–56. There is a site restriction 17.5 kilometers southwest of the community.

DATES: Comments must be filed on or before November 25, 1991, and reply comments on or before December 10, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Leonard S. Joyce, Belle Plaine Broadcasters, Inc., 1825 K Street, NW., suite 510, Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–279, adopted September 18, 1991, and released October 2, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc 91–24100 Filed 10–4–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–278, RM–7809]

Radio Broadcasting Services: Minneapolis, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Belinda S. Ohlemeier proposing the substitution of Channel 224C2 for Channel 224A at Minneapolis, Kansas, and modification of the construction permit for Channel 224A to reflect the higher class channel. The coordinates for Channel 224C2 are 39–00–52 and 97–37–42. We shall propose to modify the construction permit for Channel 224A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 25, 1991, and reply comments on or before December 10, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901 Fifteenth Street, NW., suite 1100, Washington, DC 20005.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–278 adopted September 18, 1991, and released October 2, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–24101 Filed 10–4–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–277, RM–7810]

Radio Broadcasting Services; Oxford, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Oxford Radio, Inc., proposing the substitution of Channel 229C3 for Channel 229A at Oxford, Mississippi, and modification of the license for Station WKLJ–FM to specify operation on Channel 229C3. The coordinates for Channel 229C3 are 34–20–05 and 89–43–29. The license for Station WKLJ–FM was modified in MM Docket 91–6 to specify operation on Channel 229A in lieu of Channel 296A. See 56 FR 27423, June 14, 1991. In accordance with section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Oxford or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

DATES: Comments must be filed on or before November 22, 1991, and reply comments on or before December 9, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Vincent J. Curtis, Jr., Estella Salvatierra, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., suite 400, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.

91–277, adopted September 18, 1991, and released October 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–23998 Filed 10–4–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-274, RM-7802]

Radio Broadcasting Services; Piedmont, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Hunt Broadcasting Group, Inc. requesting the substitution of Channel 285C3 for Channel 285A at Piedmont, Missouri, and modification of the license for Station KPWB–FM to specify operation on the new channel. The coordinates for Channel 285C3 are 37–13–32 and 90–48–48. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 285C3 at Piedmont or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 22, 1991, and reply comments on or before December 9, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel or, as follows: John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 700 Thirteenth Street NW., suite 700, Washington, DC 20005–3960.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–274 adopted September 17, 1991, and released October 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–23995 Filed 10–4–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-275, RM-7786]

Radio Broadcasting Services; Franklin, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Franklin Community Broadcasting seeking the substitution of Channel 270C3 for Channel 270A at Franklin, Texas, and the modification of Station KPXQ(FM)'s construction permit to specify operation on the higher powered channel. Channel 270C3 can be allotted to Franklin in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.5 kilometers (6.5 miles) southeast to accommodate petitioner's desired transmitter site. The coordinates for Channel 270C3 at Franklin are North Latitude 30–56–34– and West Longitude 96–25–59. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 270C3 at Franklin or require Franklin Community Broadcasting to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 22, 1991, and reply comments on or before December 9, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun A. Maher, Esq., Blair, Joyce & Silva, 1825 K Street NW., suite 510, Washington, DC 20006 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–275, adopted September 18, 1991, and release October 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-23996 Filed 10-4-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-276, RM-7804]

Radio Broadcasting Services; Belton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Sheldon Communications, Inc., licensee of Station KOOC(FM), Channel 292A, Belton, Texas, seeking the substitution of Channel 292C3 for channel 292A at Belton, Texas, and the modification of Station KOOC(FM)'s license to specify operation on the higher powered channel. Channel 292C3 can be allotted to Belton in compliance with the Commission's minimum distance separation requirements and can be used at Station KOOC(FM)'s licensed site. The coordinates for Channel 292C3 at Belton are North Latitude 31-03-46 and West Longitude 97-31-54. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 292C3 at Belton or require Sheldon Communications to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 22, 1991, and reply comments on or before December 9, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John E. Fiorini III, Gardner, Carton & Douglas, 1301 K Street NW., suite 900, East Tower, Washington, DC 20005 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-276, adopted September 18, 1991, and released October 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-23997 Filed 10-4-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018—ABA2

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Five Mollusks From South Central Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposed determination of endangered status for five mollusks is reopened (55 FR 51931) December 18, 1990. The five species included in the proposed rule are: the Idaho springsnail (also called the Homedale Creek springsnail (*Fontelicella idahoensis*)), the Utah valvata snail (*Valvata utahensis*), the Snake River Physa snail (*Physa natricina*), an undescribed limpet species in the genus *Lanx* (Banbury Springs limpet) and the Bliss Rapids snail (an undescribed monotypic genus in the family Hydrobiidae). These species are found in the Snake River and in adjacent springs, and tributaries to the Snake River in South Central Idaho. Reopening the comment period will allow additional comments on this proposal to be submitted from all interested parties.

DATES: Comments will now be received until October 31, 1991.

ADDRESSES: Written comments and materials should be sent to Charles Lobdell, Field Office Supervisor, U.S. Fish and Wildlife Service, room 576, Boise, Idaho 83705. The proposed rule, comments, and materials will be available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Parenti, at the above address (208/334-1931 or FTS 554-1931).

SUPPLEMENTARY INFORMATION:

Background

The Bliss Rapids snail (Family Hydrobiidae NSP), *Physa natricina*, *Fontelicella idahoensis*, *Valvata utahensis*, Banbury Springs limpet (in *Lanx* genus N. sp) are found only in the Snake River and in adjacent springs and tributaries to the Snake River in South Central Idaho.

These five species are threatened primarily by proposed large hydroelectric dam developments, current peak-loading operation of existing hydroelectric water projects, water pollution, reduction in oxygen concentration, and possibly competition from *Potomapyrgus antipodarum* (= *P. jenkinsi*) a recently introduced hydrobiid snail.

On December 18, 1990 the Service published in the **Federal Register** (55 FR 51931) a proposal to list these five mollusk species as endangered. The comment period on the proposal originally closed on February 19, 1991. Two public hearings were held in Idaho on April 3 and 4, 1991. The comment period was extended at that time until April 30, 1991. The Service is aware of information developed since that time. Reopening the comment period will allow the Service to consider this and any other information in determining whether or not a final designation of endangered or threatened status is warranted for these five species. Additional information and comments may now be submitted until October 31,

1991 to the Service office in the "ADDRESSES" section.

Author

The primary author of this notice is Dr. Robert L. Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705 (208/334–1931 or FTS 554–1931).

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 17

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

Dated: September 27, 1991.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 91–23938 Filed 10–4–91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues notice that the South Atlantic Fishery Management Council has submitted Amendment 5 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public. Amendment 5 would implement new management measures for wreckfish, including a limited entry program.

DATES: Written comments must be received on or before November 29, 1991.

ADDRESSES: Comments should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33703. Copies of Amendment 5 may be obtained from the South Atlantic Fishery Management Council, Southpark Building, suite 306, 1 Southpark Circle, Charleston, SC 29407–4699, telephone 803–571–4366.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval of disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public inspection and comment. The Secretary will consider public comment in determining approvability of the document.

Amendment 5 to the FMP proposes to: (1) Revise the problem statement in the snapper-grouper fishery and objectives of the FMP; (2) implement a limited entry program for the wreckfish sector of the snapper-grouper fishery consisting of transferable percentage shares of the annual total allowable catch (TAC) of wreckfish and individual transferable quotas based on a person's share of each TAC; (3) specify the procedure for the initial distribution of percentage shares of the wreckfish TAC; (4) require dealer permits to receive wreckfish; (5) remove the 10,000-pound (4,536-kilogram) trip limit for wreckfish; (6) require that wreckfish be off-loaded from fishing vessels only between 8 a.m. and 5 p.m.; and (7) specify when 24-hour advance notice must be made to NMFS Law Enforcement of off-loading of wreckfish.

Proposed regulations to implement Amendment 5 are scheduled for publication within 15 days.

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

Dated: October 1, 1991.

David S. Crestin,

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

[FR Doc. 91–24029 Filed 10–1–91; 4:46 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 194
Monday, October 7, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; Proposed Revision of an Existing System of Records

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed revision of an existing system of records.

SUMMARY: The U.S. Department of Agriculture is giving notice that it proposes to revise its Privacy Act System of Records, USDA/FNS–3, Claims Against food Stamp Recipients—USDA/FNS–3.

EFFECTIVE DATE: This revision will become effective December 6, 1991, unless modified by a subsequent notice to incorporate comments received from the public. To be assured of consideration, comments must be received by the contact person listed below on or before November 6, 1991.

ADDRESSES: Comments should be addressed to Abigail C. Nichols, Director, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 907, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Joseph M. Scordato, Food and Nutrition Service Privacy Act Officer, Room 308, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone (703) 756–3234.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service (FNS) has a system of records for tracking food stamp recipient claims which has not been used for many years. The system, as currently described in FNS notices on systems of records, was established when the FNS National and regional offices maintained relatively detailed records about recipient claims. Those records included detailed information about such matters as the basis for claims, supporting documentation from State agencies, the balances of claims and amounts paid on them. That information was used to establish accounts receivable for money due the FNS, or to refer information for investigation or prosecution under program statutes and regulations. Since this system of records on recipient claims was established, changes in law and regulations have delegated to State agencies substantially all of the responsibility for food stamp recipient claims. Consequently, in recent years, FNS has not updated or maintained detailed records about individual claims. No formal action was ever taken to delete the system of records. Because of new collection activity described below that requires maintenance of certain records, FNS is modifying and reactivating this existing system. This notice informs the public that the current system of records is being revised for use in the tax offset program, as discussed in the following paragraph.

The FNS is planning to test the feasibility and effectiveness of referring claims to the Internal Revenue Service (IRS) for offset against refunds of Federal income tax. State agencies will submit information about claims for offset to the FNS. The revised record system is needed because the IRS requires that debts referred for offset be submitted in consolidated fashion by the Federal agency which is owed the debts rather than having each State agency submit its list of debts separately. The FNS will consolidate recipient claims information from State agencies, refer the information to the IRS for the tax offset activity, receive and process information from the IRS, and provide State agencies information concerning collections. Details about the test of the tax intercept program are contained in a separate **Federal Register** Notice which will be published in the near future.

The revised system of records will be maintained by automated data processing systems consisting primarily of data tapes, disk storage and programs used to process the data. Information in the revised records system will be limited, including only such items as the amount of the claim, the name and Social Security Number of the debtor, and the amounts of any collection. The system may also include other research-related information about the claim such as its age, the reason for the associated overissuance, and State agency collection efforts. The FNS will retain this information for no longer than two years. Any reports which FNS develops using the data will be statistical and contain no information about particular claims or individuals owing the claims.

The system, as revised, will no longer be exempt, pursuant to 5 U.S.C. 552a (j) or (k).

Signed at Washington, DC, on September 30, 1991.

Edward Madigan,

Secretary.

USDA/FNS–3

SYSTEM NAME:

Claims Against Food Stamp Recipients—USDA/FNS.

SYSTEM LOCATION:

Accounting Division, Food and Nutrition Service (FNS), United States Department of Agriculture, 3101 Park Center Drive, Room 415, Alexandria, Virginia 22302, and FNS Regional Offices located in: Atlanta, Georgia, which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Boston, Massachusetts, which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, New York, Rhode Island, and Vermont; Chicago, Illinois, which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas, which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado, which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Trenton, New Jersey, which covers the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; and San Francisco, California, which covers the States of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington. The address of each regional office is listed in the telephone directory of the respective cities listed above under the heading of "United States Government, Department of Agriculture, Food and Nutrition Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received food stamp benefits to which they are not entitled.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of individuals' names, addresses, Social Security Numbers and amounts of claims and amounts of any collections. The system also may include limited information about claims such as age, reasons for the overissuance of benefits, and State agency collection efforts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2011–2031.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the IRS for collection of claims from tax refunds; and (2) referral to appropriate State agencies for such purposes as updating claims files and for fiscal reporting. (3) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made on behalf of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by automated data storage methods such as magnetic tape and disk.

RETRIEVABILITY:

Records are retrievable by name and Social Security Number.

SAFEGUARDS:

Access to records is limited to those persons who process the records for the specific routine uses stated above. Records in such forms as magnetic tape are kept in physically secured rooms and/or cabinets. Various methods of computer security limit access to records in automated databases.

RETENTION AND DISPOSAL:

The Food and Nutrition Service retains records for no longer than two years. All records are either returned to State agencies or destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Accounting Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 415, Alexandria, Virginia 22302.

NOTIFICATION PROCEDURE:

Individuals may request from the system manager identified in the preceding paragraph information regarding this system of records or whether the system contains records pertaining to them. Individuals requesting such information must provide their name, address and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals may obtain information about records in the system which pertain to them by written or oral requests to the system manager. To assure confidentiality and prompt routing, written requests should be marked "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct requests to the system manager, state the reasons for contesting the information and provide any available documentation to support the requested action.

RECORD SOURCE CATEGORIES:

Information in this system comes from State agency files concerning food stamp recipient claims, from IRS files of addresses of individuals who have filed income tax returns, and from IRS files of offsets from income tax refunds.

[FR Doc. 91–24074 Filed 10–4–91; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Pacific Southwest Region, California; Legal Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On April 2, 1991, the Pacific Southwest Region published a list of newspapers in which decisions would be published in accordance with 36 CFR 217.5(d). This list must be updated twice annually. The April 2, 1991 Pacific Southwest Region list will remain unchanged. The April 2, 1991 notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217.

The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 28, 1991. The list of newspapers will remain in effect until April 1992 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: KJ Silverman, Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705–2554.

SUPPLEMENTARY INFORMATION: On March, 1990, an interim rule amending the administrative appeal procedures at 36 CFR part 217 was published requiring publication of legal notice of decisions subject to appeal. On February 6, 1991, a notice was published in the **Federal Register** finalizing the interim rule. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

Dated: September 30, 1991.

Beverly Holmes,

Deputy Regional Forester.

[FR Doc. 91–24040 Filed 10–4–91; 8:45 am]

BILLING CODE 3410–11–M

National Commission on Wildfire Disasters; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Commission on Wildfire Disasters will hold its first meeting November 4–8, 1991. The Commission is authorized by the Wildfire Disaster Recovery Act of 1989.

DATES: The meeting will convene at 1 o'clock on Monday, November 4, 1991, and adjourn at noon on Friday, November 8, 1991.

ADDRESSES: The meeting will be held at the Hyatt Hotel, 1325 Wilson Blvd., Arlington, Virginia 22209

FOR FURTHER INFORMATION CONTACT: Dennis W. Pendleton, Fire and Aviation Management Staff, Forest Service, (202) 205–1511.

SUPPLEMENTARY INFORMATION: The Wildfire Disaster Recovery Act of 1989 established a Commission to study the effects of disastrous wildfires, resulting from natural or other causes, and to make recommendations concerning the steps necessary for a smooth and timely transition from the loss of natural resources due to such fires. The Commission is composed of 25 members, 13 appointed by the Secretary of Agriculture and 12 appointed by the Secretary of the Interior. The Act directs the Commission to submit to the Secretaries of Agriculture and the Interior, not later than December 1, 1991, a report containing its findings and recommendations.

The purpose of the meeting is to:

(1) Elect a chairperson from among the 25 members;

(2) Evaluate the accrued contributions for the Commission from interested persons, groups, and entities to determine if there is a sufficient amount to support the work of the Commission;

(3) Determine the process, duties, and course of action needed to complete the work of the Commission;

(4) Appoint and fix the compensation of a Director for the business of the Commission;

(5) Appoint and fix the compensation of such additional personnel as the Commission determines necessary to assist it to carry out its duties and functions;

(6) Determine and appoint work assignments for the Commission members; and

(7) Set a date and place for the next meeting of the Commission.

Dated: September 13, 1991.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 91–24031 Filed 10–4–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Senior Executive Service: Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System.

Hugh L. Brennan
Guy W. Chamberlin, Jr.
David L. Edgell
Mary Ann T. Fish
Barbara S. Fredericks
Jose A. Lira
James M. LeMunyon
Otto J. Wolff

H. James Reese,

Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 91–24084 Filed 10–4–91; 8:45 am]

BILLING CODE 3510–BS–M

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part of the antidumping duty order.

SUMMARY: On June 7, 1991, the Department of Commerce published the preliminary results of its administrative review and its intent to revoke in part the antidumping duty order on certain fresh cut flowers from Columbia (56 FR 26379). The review covers 186 producers and/or exporters of this merchandise to the United States and the period March 1, 1989 through February 28, 1990. We have now completed that review and determine the weighted-average dumping margins to range between zero and 43.02 percent for the reviewed firms. The Department is revoking the antidumping duty order with respect to the Floramerica Group of companies.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1991, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review and intent to revoke in part the antidumping duty order on certain fresh cut flowers from Columbia (56 FR 26379). The reviews of two producers and/or exporters, for which the review requests were timely withdrawn, were terminated at that time. We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Columbia (standard carnations, miniature (spray) carnations, standard chrysanthemums, and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 6003.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 186 Colombian producers and/or exporters to the United States of the subject merchandise and the period March 1, 1989 through February 28, 1990. The Department is revoking the antidumping duty order with respect to the Floramerica Group of companies.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments from Asocolflores, the Columbian association of flower exporters, on behalf of its members, from importers, Continental Farms and Equiflor, from respondents, Exportaciones Bochica/Floral, Flores del Cauca, and the Floramerica Group, and from the petitioner, the Floral Trade Council.

Since the publication of these preliminary results, the Department published the final results of review for the period November 3, 1986 through February 29, 1988 (56 FR 32169; July 15, 1991). In that review, in response to a comment raised by a respondent, the Department revised its methodology for converting respondents' constructed value from pesos to dollars. This revision was made based on a combination of factors affecting this case, such as high inflation, consequent devaluation, and the nature of calculating constructed value for agricultural products. Because the same combination of circumstances also are present in this review period, the Department has revised the procedure used in the preliminary results of this review to convert respondents' period-average peso constructed value to dollars. Therefore, consistent with the methodology used in the review of the 86–88 period, we have converted the period-average peso constructed value to dollars using the corresponding period-average exchange rate for all

respondents that used monthly exchange rates for this purpose in their questionnaire response. For a complete discussion of the issue, see *Comment 1* of the above referenced notice (56 FR 32169).

Comment 1: Petitioner argues that the Department's conclusion that third-country sales are an inappropriate basis for determining foreign market value (FMV) is contrary to law, agency practice, and unsupported by the evidence on the record. Both the statute and the legislative history favor the use of actual prices rather than constructed value (CV) where the Department has adequate third country price information. Moreover, the reasons cited by the Department in previous administrative reviews of this order for the departure from its longstanding practice are not supported by the evidence in this review. This record demonstrates that the Columbian growers plan flower production so as to provide the colors and types of flowers that are demanded in the European market at periods of peak demand and have the ability to control the prices for such sales.

Department's Position: We agree with the petitioner that the Department's regulations (19 CFR 353.48(b)) state a preference for third country prices over CV to compute foreign market value. However, the Department believes that the use of the words "normally" and "prefer" allow the Department the discretion to disregard third country sales in favor of CV in extraordinary circumstances. In this review, as in both preceding reviews of this order, the Department has rejected third country sales in favor of CV because, contrary to petitioner's assertion, the evidence on the record indicates that third country prices remain an inappropriate basis for comparison. This conclusion is based on an econometric study, originally submitted in the second administrative review but also relevant to this period of review, which analyzes production characteristics of the fresh cut flower industry and compares pricing practices in the United States and major third country markets. This study demonstrates, among other things, that cut flower industry trends in the U.S. and third country markets are not positively correlated and can, therefore, either mask dumping in some instances or exaggerate dumping in other instances. The Department believes that the study provides compelling support for the use of CV rather than reliance on third country pricing information in this case. See also Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia (55 FR 20491; May 17, 1990) and Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia (56 FR 32169; July 15, 1991), hereinafter Final Results 2 and Final Results 1, respectively.

Comment 2: Petitioner contends that, in the calculation of respondents' monthly average U.S. price for each flower type, the Department should not average standing order sales with spot market sales, since the two types of transactions are fundamentally different in nature. Standing order sales are made at prices generally fixed throughout the year, whereas spot market sales are made at prices which are established daily based on supply and demand conditions and perishability, which can result in widely fluctuating prices. These latter sales often involve the clearing of inventory at the end of the day, when sellers often accept whatever return they can obtain, in order to prevent the flowers from perishing. The language of the statute, the legislative history, and Departmental practice allows averaging only insofar as it is necessary and as it can yield "representative" results. Where, as here, the selling practices are different and distinguishable, a "representative" average should be tailored to reflect that difference. Whereas the spot transactions are affected by the perishable nature of the flowers and by the price swings associated with end-of-the-day sales, the standing order prices are not so influenced. It follows, therefore, that a representative average price for each of these two types of transactions would be quite different than the use of a combined average which could mask dumping during periods of low market demand. For these reasons, the Department should calculate two separate monthly averages for each type of transaction.

Department's Position: We disagree. By averaging U.S. prices on a monthly basis, the Department ensures that a wide range of sales prices are covered. In addition, we disagree with petitioner's factual conclusions that a grower has control over the prices when sales are made on a standing order basis and that these prices are fixed. Evidence examined during verification demonstrates that the U.S. consignment agent, not the grower, enters into any standing order arrangements with U.S. customers. In fact, the grower is not informed which flowers, if any, were ultimately sold to satisfy a standing order arrangement, because the reports to the grower do not distinguish between the two types of transactions. Moreover, the record indicates that although a customer agrees to purchase a certain quantity of flowers, the price is not always set at the time the standing order is entered. Even when a general price is agreed to ahead of time, it is subject to subsequent confirmation. Under these conditions, the Department believes that standing order prices, like open market prices, could be subject to fluctuations due to perishability (although perhaps to a lesser extent). Given these facts, we see no reason to change our established U.S. price calculation which we believe adequately accounts for any differences and is a representative reflection of all U.S. sales.

Comment 3: Petitioner states that, for bouquet sales made by SunPetals (a U.S. selling agent of the Floramerica Group), the price calculated for flowers subject to the order was erroneously derived from the bouquet price by subtracting the cost of the non-flower components. Since no profit was allocated to the non-flower items, this methodology results, according to petitioner, in an overallocation of the relative price to the flower components. Petitioner contends that the department should recalculate the price of subject flowers by treating the value of the non-flower components like the relative sales value of different flowers.

Department's Position: The Sunpetals' portion of the price received for subject flowers contained in its bouquets is included in the total monthly value of U.S. sales made by the Floramerica Group of companies. The Department has determined that the number of subject flowers used in bouquets is relatively small and that the relative contribution of bouquets to the Floramerica Group's total monthly sales value is minimal. Using carnations as an example, in order to obtain a change in the total sales value of carnations sold by the group of greater than *de minimis* impact (*i.e.*, 0.50 percent), the value of Sunpetals' carnations sold in their bouquets would have to increase by over 30 percent as a result of the requested reallocation. Furthermore, the bouquet chosen for examination at verification, which included a glass soda vase and which undoubtedly prompted petitioner's concern, is not typical of the majority of Sunpetals' bouquets because the glass soda vase is a particularly expensive hard-good component. For the majority of Sunpetals' bouquets, the hard goods consist primarily of low-cost packing materials. Because we believe that the allocation used by the respondent does not result in any

significant distortion of the U.S. price and because the requested reallocation of profit would have an insignificant impact on the weighted-average monthly price reported for the Group, we are accepting respondent's methodology as reasonable and appropriate.

Comment 4: Asocolflores, on behalf of its respondent members, as well as respondents Flores Del Cauca and Exportaciones Bochica/Floral argue that the Department should use annual average U.S. prices in its margin calculations in order to appropriately account for the unique nature of the flower industry. The inability to control production in the short term, together with the inability to store the product and the extreme volatility of prices, means that flower producers cannot expect to make a profit on every sale. Indeed, because of the seasonal nature of the industry, producers cannot necessarily expect to make a profit on sales occurring in certain months. Since production cannot be stopped, a flower producer often elects to recover part of his costs during low-price months by selling flowers produced during that period, even if the prices are low. Because of this, producers evaluate their production and revenue decisions over a long-term period, generally over the course of the industry's annual economic cycle.

Asocolflores claims the Department has recognized that it is unrealistic, in the case of perishable products, to expect a profit to be earned on each and every sale, as evidenced by the Department's modified cost test when applied to agricultural products. Specifically, the Department has determined that it will disregard home market (or third country) sales made below cost only if such sales account for more than 50 percent of all home market (or third country) sales over the period of review. Although the Department applies this principle in cases involving price-to-price comparisons, the Department ignores this principle when U.S. price is compared to an annual CV. In such a comparison, the producer is expected to make a profit in each and every month, contrary to the commercial realities of the U.S. flower market. There is no reason why a significant number of below-cost sales over the course of the year in the home market and, consequently, in the United States should be recognized as a normal business practice in the case of price-to-price comparisons, but labelled "dumping" in price-to-CV comparisons. Therefore, respondents contend that the Department should compare an annual average U.S. price to an annual average CV.

Department's Position: We disagree. The Department believes that monthly averaged U.S. prices adequately account for the characteristics of the flower industry, without over-compensating. Respondents' assertion that the Department's use of monthly averaged U.S. prices conflicts with its use of a modified cost test (as applied to agricultural products) misconstrues the statute and theory underlying the exclusion of below-cost sales from foreign market value. The statute makes allowances for below-cost sales when the Department is relying upon home market and third country sales. These standards are intended to guide the Department in determining when to consider home market and third country sales and when to disregard them. Once a decision is made to use CV, sales are irrelevant to a determination of foreign market value and so is the below-cost test. Nothing in the statute, the legislative history, or the Department's practice (including Final Determination of Sales of Not Less Than Fair Value: Fresh Winter Vegetables from Mexico (45 FR 20512; March 24, 1980)) supports the broad notion of annual averaged U.S. prices. Annual averaging would extend too much credit to respondents by allowing them to dump for entire months when demand is sluggish, so long as they recoup their losses during months of high demand. The Department is not required to measure whether profits are made upon an annual basis, especially not in an administrative review, when margins are normally determined on a sale-by-sale basis (not annually).

Contrary to respondents' assertions, the Department's approach is broad enough to eliminate, to a reasonable degree, a finding of technical dumping, without overcompensating for the characteristics of the flower industry. The Department's use of monthly averaging ensures that an entire range of distress and non-distress sales prices are covered, and is consistent with its established practice which has been upheld by the Court of International Trade (CIT). *Floral Trade Council* v. *United States*, 704 F. Supp 237 (CIT 1988). *Accord Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114 (CIT 1989). The Department continues to believe that this limited form of averaging adequately addresses the concerns of the respondents, while still attending to the petitioner's concerns regarding the masking of dumping.

Comment 5: Respondent Jardines de Choconta claims that its response should be corrected for obvious clerical errors. In addition, respondent asks for correction of errors based on their misunderstanding of the questionnaire and provides clarifying new information.

Department's Position: We have corrected jardines de Choconta's response for those obvious clerical errors made by the company, since we were able to establish that the correct information was contained in the original questionnaire response. Corrections which would be possible only by using new factual information provided in their brief were not allowed.

Comment 6: Certain affected importers argue that the Department should not use the Jardines de Choconta rate as the best information available (BIA) rate for non-responding firms, because Choconta's response is patently erroneous. The Department should instead use the highest rate of any company that submitted a coherent, credible response.

Department's Position: We disagree. The Department has used the highest non-BIA rate from an administrative review of this order as our BIA rate for non-responding firms. In this case, the highest calculated rate is that of Jardines de Choconta from this review. The use of Choconta's rate is more than reasonable given the absence of cooperation from affected firms, who chose not to submit any response, be it credible, coherent or otherwise.

Comment 7: An importer, Equiflor, claims that Flores la Cabaneula a company that did not respond to the Department's questionnaire, should not be assigned a BIA rate because of the the firm's bankruptcy during the period of review. In other cases involving a large number of responding companies, the Department has determined that firms no longer in business due to bankruptcy should not be covered be the administrative review. See, e.g., Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part: Roller Chain, Other Than Bicycle from Japan (47 FR 44597; October 8, 1982), Preliminary Results of Administrative Review of Antidumping Finding: Steel Wire Rope from Japan, (48 FR 54528; December 5, 1983). Similarly, the importer claims Cabanuela should be excluded from the review and its entries should be liquidated at the deposit rate, rather than assigned a BIA rate.

Department's Position: We disagree. The new information regarding the alleged bankruptcy of Flores La

Cabanuela was submitted after the preliminary results of review, making it untimely (*see* 19 CFR 353.31(a)(ii)) and, therefore, impossible for the Department to evaluate adequately. Moreover, through Asocolflores, the Government of Colombia provided the Department with a certified list of companies with shipments during the period of this review. Since Flores la Cabanuela was included in this list, the Department has concluded that the company was active in the U.S. market during the period of review. In fact, public information provided by the Government of Colombia in the subsequent administrative review by letter dated May 22, 1991, indicates Cabanuela continued to ship during the March 1, 1990 through February 28, 1991 period. Given these circumstances, the Department finds that Flores la Cabanuela was shipping during (and subsequent to) the period of review and, consequently, is properly subject to the review in progress. Because the firm did not respond to our questionnaire or provide timely factual information for our consideration, it is properly assigned a BIA rate.

Comment 8: Supplemental information correcting its original questionnaire response, timely submitted by Daflor, was not considered in the preliminary results. Daflor requests that the Department correct this oversight.

Department's Position: We agree and have included in these final results the supplemental information provided by Daflor prior to the preliminary results.

Comment 9: The Floramerica Group, one of the respondents, argues that the Department improperly computed the indirect selling expenses attributable to their Panamanian sales affiliate. With the exception of legal fees, the Department disallowed the exclusion of all other expenses as requested, such as expenses attributable to operations outside of Colombia and to activities of the Board of Directors involving products other than flowers. The respondent requests that the Department adjust the selling expenses of their sales subsidiary to specifically exclude those quantifiable expenses incurred on sales of flowers from Ecuador and from unrelated farms in Colombia.

Department's Position: During verification of the indirect selling expenses incurred by the Floramerica Group's Panamanian sales subsidiary, it was determined that a significant portion of the subsidiary's selling expenses were excluded from the allocation provided in the questionnaire response. The Department does not object to the exclusion of costs unrelated to the selling activities of the subject merchandise, but does object to the unilateral exclusion of large portions of expenses with no corresponding adjustment to the allocation base. We do, however, agree that for the specific expenses mentioned, for which an allocation can be reasonably apportioned, we improperly failed to make the appropriate adjustments and are amending our calculations accordingly in these final results.

Comment 10: Floramerica Group argues that foreign exchange earnings should be allowed as an offset to foreign exchange costs in the calculation of their financing-expense component of CV. The difference between the receivable recorded in pesos at the time of sale and the later reconciliation with the dollar amount subsequently paid normally results in a gain in peso terms. In this review, because the dollar appreciated against the peso, the farms consistently enjoyed foreign exchange earnings due to the time lag between sale and payment. Similarly, the Department takes into account foreign exchange losses which occur when farms purchase materials payable in dollars. Floramerica believes that an inconsistency exists between the Department's practice of recognizing exchange rate gains and losses related to production and its treatment of the same gains and losses related to sales. In addition, Floramerica cites as inconsistent the Department's failure to grant an adjustment for post sales-related currency gains and the Department's acceptance of other post-sale adjustments including, for example, warranty and technical services.

Department's Position: We disagree. The Department has thoroughly elaborated its position regarding this argument when it was raised by Floramerica in an earlier review. For a full discussion of the Department's rationale, see Comment 3 in *Final Results 1.*

Comment 11: Floramerica Group claims that the Department failed to adjust the antidumping duty rate to account for the difference between the larger quantity of flowers shipped to the United States and the actual quantity of flowers sold in the United States. Without such an adjustment, the total amount of duties collected would exceed the margins calculated.

Department's Position: We agree that such an adjustment is warranted and that it has been consistently applied in this case (See Final Results 2, comment 3.) We disagree, however, that the Department failed to make this adjustment in this review as Floramerica states. The Department calculated the dumping duties due based on the actual quantity of flowers sold (per unit margin times quantity sold) and divided this amount by the value of merchandise entered (U.S. price time quantity entered) in determining the company's overall weighted-average margin.

Comment 12: Exportaciones Bochica/Floral argues that the Department erred in not granting their revocation request. First, Bochica/Floral's request for revocation should not be considered untimely because, at the time that it submitted its request to participate in the third review, the company could not have certified that it was selling at prices above foreign market value because the Department's methodology for calculating the margins had not yet been established in the preceding first and second reviews. Second following a remand by the Court of International Trade at the request of the Department to correct certain errors made in the calculation of CV in the 88–89 review, the company will have a *de minimis* margin for that period. Therefore, because the company has not sold the subject merchandise at less than foreign market value for a period of at least three consecutive years, Bochica/Floral contends that they have fullfilled the revocation requirements provided in 19 CFR 353.25(a)(2) and their request for revocation should be granted.

Department's Position: Until Exportaciones Bochica/Floral demonstrates that it has sold subject merchandise at not less than fair value for a period of three years, it does not meet the eligibility requirements for revocation, even if their request had been made on a timely basis. The final results of the second review period, one of the three reviews undergone by the company to meet the three year requirement, indicate a greater than *de minimis* margin. Respondent's claim that they will have a margin well below *de minimis* upon the conclusion of the remand (which to date has not been ordered by the Court) is mere speculation at this time. Therefore, Exportaciones Bochica/Floral has not met the minimum eligibility requirement of three years of sales at not less than fair value stated in the Department's regulations.

Comment 13: Exportaciones Bochica/Floral and Flores del Cauca argue that their street vendor sales made in Miami should be excluded from their sales analysis. The companies argue that because these flowers were not of export quality when sold and are not sold through the normal distribution

channels, they are not flowers subject to the antidumping duty order.

Department's Position: The Department included in its analysis all U.S. sales of flowers which were of export quality when originally exported, which includes the street vendor sales of these respondents. The Department finds no relevant distinction between end-of-the-day distress sales (which clearly are within the scope of the order) and street vendor sales. As with end-of-the-day sales, the merchandise sold by street vendors enters U.S. commerce as "export quality" merchandise. It is irrelevant that, subsequent to entry, the merchandise deteriorated and, therefore, had to be sold through a different distribution channel at a lower price. Furthermore, the Department used a monthly weighted-average U.S. price of all export quality flowers to account for the fact that, due to perishability of the product, sellers are often faced with the choice of accepting whatever return they can obtain on the sale of the product or, alternatively, destroying the product. Accordingly, any presumably lower prices earned on these sales were fairly accounted for in the calculations.

Comment 14: Flores del Cauca argues that the Department's use of the highest publicly available CV for pompons in this review as BIA for Cauca's CV for pompons was inappropriate and highly punitive. They contend that the CV figure used as BIA is far higher than any other CV figure for pompons and was a result of extraordinary problems experienced by that grower. Accordingly, the CV figure for pompons used as BIA is not representative of the normal costs associated with the production of pompons. Since Flores del Cauca cooperated fully with the Department, and the Department was able to verify substantial portions of its response, the Department should use its discretion and choose a more appropriate BIA. They suggest either the average of the public CV figures for all companies in the review who produced pompons, or at the very most, the next highest public CV figure for pompons. Alternatively, the Department should use Cauca's CV figure for pompons from the first administrative review.

Department's Position: We disagree. While the Department recognizes that Flores del Cauca cooperated during verification and was able to adequately verify the sales portion of their response, the company remained unable to substantiate most, if not all, of their submitted CV information. Contrary to the company's assertion that part of the difficulty encountered during verification may have stemmed from logistical problems, the fact is that the company simply could not substantiate the numbers in their response with the books and records which were available on site at the verification in Miami. Accordingly, while continuing to use the verified sales portion of their response, BIA was only used for that portion of the response which was unverifiable. It is appropriate to apply an adverse BIA due to Cauca's inability to establish the accuracy of their reported costs contained in CV at verification. While it is true that the CV used as BIA may have reflected those of a respondent with higher than average costs, the Department did not intend to find a CV figure for pompons which would be an identical substitute for Cauca's costs. For these reasons, we feel that the highest publicly available CV for reviewed respondents who produced pompons during the same period is an appropriate and reasonable use of the Department's discretion in its choice of BIA.

Final Results of the Review

As a result of our comparison of United States price with foreign market value, we determine the margins to be:

Producer/exporter	Margin (percent)
Agricola Bojaca	3.57
Agricola De La Fontana	4.94
Agricola De Los Alisos	2.90
Agricola El Cactus	2.47
Agricola El Redil	0.34
Agricola Guacatay	0.32
Agricola La Corsaria Ltd	4.01
Agricola Las Cuadras	1.47
Agricola Los Arboles	4.04
Agricola Malqui	1.42
Agricola Papagayo	4.67
Agro Koralia Ltda	11.34
Agrodex Group	1.71
Agricola El Retiro	
Agricola Los Gaques	
Agrodex	
Degaflores	
Flores Camino Real	
Flores Colon	
Flores De La Comuna	
Flores De La Maria	
Flores De Las Mercedes	
Flores De Los Amigos	
Flores De Los Arrayanes	
Flores De Pueblo Viejo	
Flores Del Gallinero	
Flores Del Potrero	
Flores Dos Hectareas	
Flores El Lobo	
Flores El Puente	
Flores El Trentino	
Flores El Zorro	
Flores Juananbu	
Flores La Conejera	
Flores Tibati	
Florlinda	
Inverflores	
Inverpalmas	
Inversiones Santa Rosa	
Agroindustria Del Riofrio	0.23
Agromonte	2.54
Agropecuaria Cuernavaca	2.10
Arawac	
Becerra Castellanos	7.18
Cienfuegos	4.34
Clavecol Group	0.28
Claveles Colombianos	
Fantasia Flowers	
Splendid Flowers	
Sun Flowers	
Claveles De Los Alpes	0.81
Colflores	1.26
Crop S.A.	3.53
Cultivos El Lago	4.43
Cultivos Medellin	3.89
Cultivos Miramonte	0.09
Cultivos Tahami	1.98
Daflor	2.31
Del Tropico Ltda	2.29
Dianticola Colombiana	2.59
El Timbul	43.02
Exportaciones Bochica/Floral Ltda	
Flora Bellisima	3.10
Floralex	1.26
Floramerica Group	0.30
Cultivos del Caribe	
Floramerica	
Flores Las Palmas	
Jardines de Colombia	
Florandia Herrera Camacho	
Flores Aguila	43.02
Flores Alborada	0.60
Flores Al Faya	43.02
Flores Altamira	1.51
Flores Arco Iris	4.49
Flores Aurora Ltda	
Flores Cajibio	2.82
Flores Cigarral	5.66
Flores Colombianas Group:	
Agrosuba	
Flores Colombianas	
Jardines de los Andes	
Productos El Cartucho	
Flores Condor De Colombia	
Flores De Exportacion S.A.	1.51
Flores De Funza	0.60
Flores De Hacaritania	0.41
Flores De Hunza	6.15
Flores De La Montana	3.81
Flores De La Pradera	
Flores De La Sabana	6.85
Flores De La Vega	4.43
Flores De Nemocon	43.02
Flores De Serrezuela	1.20
Flores De Suba	10.21
Flores De Suesca	6.40
Flores Del Bosque	0.60
Flores Del Campo	2.76
Flores Del Cauca	25.58
Flores Del Lago	4.17
Flores Del Rio	
Flores Del Tambo	2.74
Flores Depina	8.95
Flores El Arenal (Florenal)	0.32
Flores El Rosal	3.99
Flores Estrella	0.34
Flores Generales	1.24
Flores Gicro	2.75
Flores Guaicata	33.65
Flores Hana Ichi De Colombia	14.76
Flores Juncalito	12.46
Flores La Cabanuela	43.02
Flores La Conchita	4.34
Flores La Fragancia	9.82
Flores La Union	2.84
Flores Las Caicas	1.11
Flores Mocari	14.76
Flores Monserrate	7.90
Flores Mountgar	43.02
Flores Petaluma	28.57
Flores Sagaro Ltda	
Flores Santa Fe	2.58

Producer/exporter	Margin (percent)
Flores Santa Rosa	4.29
Flores Tairona	5.66
Flores Tiba	6.34
Flores Tocarinda	1.06
Flores Tokay Hisa	14.76
Flores Tomine	2.72
Flores Tropicales	1.12
Flores Urimaco	4.39
Florexpo	2.46
Floricola La Gaitana	11.63
Groex	5.02
Grupo Andes	1.09
Agricola Arenales	
Cultivos Buenvavista	
Flores De Los Andes	
Flores Horizonte	
Inversiones Penas Blancas	
Groupo Soagro	5.37
Agricola El Mortino	5.37
Flores Aguaclara	
Flores Del Monte	
Flores La Estancia	
Jaramillo Y Daza	
Happy Candy	1.12
Horticultura De La Sabana	0.88
Industrial Agricola	
Ingro	7.80
Innovacion Andina	0.88
Inpar	5.03
Invernavas Ltda	43.02
Inversiones Calypso	4.67
Inversiones Cubivan	2.30
Inversiones La Serena	2.08
Inversiones Miraflores	4.19
Inversiones Oro Verde	4.19
Inversiones Santa Rita	3.23
Inversiones Targa	4.63
Iturrama	9.88
Jardines Bacata	0.32
Jardines Carolina	3.05
Jardines De Choconta	43.02
Jardines De Chia	0.56
Jardines Del Muna	8.40
Jardines Fredonia	
Jardines Natalia	3.07
Las Amalias/Pompones	
Linda Colombiana	0.58
Los Geranios	2.61
Mg Consultores	1.55
Monteverde	5.94
Plantaciones Delta	2.51
Plantas Ornamentales	1.96
Rosas Colombianas	1.12
Rosas Sabanilla	2.08
Rosas Y Flores	2.17
Santa Helena	3.23
Santana Group	0.53
Hacienda Curubital	
Inversiones Istra	
Santana Flowers	
Shasta Flowers	4.48
Sunset Farms	2.56
Tag Ltda (Technica Agricola Ganadera Tag Ltda)	3.12
Toto Flowers	3.32
Tuchany	1.07
Uniflor	5.79
Universal Flowers	1.40
Velez De Monchaux (Flores Suasuque)	2.45
Villa Diana	6.53

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for reviewed firms. For companies with zero or *de mimimis* margins (*i.e.*, less than 0.5 percent), no cash deposit will be required. For shipment from producers and/or exporters not covered by this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit will continue to be the rate published in the most recent determination for which the producer and/or exporters received a company-specific rate. For all other producers and/or exporters of this merchandise, the cash deposit rate shall be 2.26 percent, the weighted-average margin for all reviewed firms in this review. Because this review covers an unusually large number of companies (186 respondents), the potential for a single outlier company with enormously disparate results is significantly increased. Accordingly, for purposes of this review, we are using a weighted-average margin for all reviewed firms, instead of the highest non-BIA margin, to determine the rate for all other companies not reviewed. This approach is consistent with the Department's Final Results 2. These deposit requirements will be effective for all shipments of Colombian fresh cut flowers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: September 30, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-24085 Filed 10-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Portable Electric Typewriters From Japan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On May 16, 1991, the Department of Commerce submitted to the Court of International Trade (CIT) the final results of redetermination pursuant to a second remand from the CIT in *Nakajima All Co., Ltd.*, v. *United States* (Slip Op. 91-23, April 1, 1991). On July 11, 1991, the CIT affirmed our redetermination. In accordance with the Court's determination we are hereby amending the final results of the administrative review for Nakajima All Co., Ltd. for the period May 1, 1981 through April 30, 1982.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1990, the Court of International Trade (CIT), in Slip Op. 90-67 in *Nakajima All Co., Ltd.* v. *United States*, remanded to the Department of Commerce (the Department) for redetermination of the final results of the administrative review of the antidumping duty order on portable electric typewriters (PETs) from Japan (52 FR 1504, January 14, 1987). In the Department's final results, the dumping margin for PETs sold or imported into the United States by Nakajima All Co., Ltd., (Nakajima) during the May 1, 1981 through April 30, 1982 period was 16.40 percent. The final results for four models, the 7500, 8500, 8600, and M100, were based on the best information otherwise available (BIA). The final results for the fifth model, the 8800C, were based on information submitted by Nakajima.

Nakajima contested the Department's decision to initiate a cost of production (COP) inquiry which resulted in the use of BIA for the four models listed above. In conducting the inquiry, the Department relied on a market research report submitted by Smith Corona Corp. (Smith Corona). Noting problems with the market research report, the CIT, in Slip Op. 90-67, held that there was an insufficient basis for initiating a COP inquiry. The Court remanded the proceeding to the Department for redetermination, finding that the Department's decision to investigate Nakajima's costs of production was not supported by substantial evidence on the record or otherwise in accordance with the law.

On remand, the Department utilized Nakajima's sales information to recalculate the dumping margin and released its proposed results to the parties for comment. After consideration

of the comments received, the Department determined that Nakajima's revised weighted average margin for the review period in question was 0.0024 percent. The Department submitted its final results of redetermination to the CIT on November 30, 1990.

In an April 1, 1991 opinion (Slip Op. 91–23), the CIT stated that the Department erroneously interpreted the July 20, 1990 (Slip Op. 90–67) opinion as directing the Department to rely on Nakajima's sales data rather than use BIA. Therefore, the Court issued a second remand "to afford the agency an opportunity to receive and consider whatever data the parties may possess and which bear on the ultimate question presented for redetermination." Slip Op. 91–23 at 6.

As a result of the Court's decision, the Department invited the parties to submit comments or information. Based on analysis of the comments and information received, we determined that the supplemental information submitted by Smith Corona, concerning its allegation of sales below COP, failed to alleviate the shortcomings identified by the CIT in the Court's original remand decision of July 20, 1990. Consequently, we determined that Smith Corona's allegation of sales below COP was inadequate. As a result, we used sales information submitted by Nakajima during the administrative review to complete the second remand. Consequently, the result of the first remand remained unchanged, and Nakajima's revised dumping margin for the May 1, 1981 through April 30, 1982 period is 0.0024 percent. The CIT affirmed our redetermination on July 11, 1991.

Amended Final Results of Review: Based on our reliance on Nakajima's home market sales data rather than BIA, we have amended our final results of review for the May 1, 1981 through April 30, 1982 period with respect to Nakajima. The amended weighted average margin for Nakajima is 0.0024 percent. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

There will continue to be no cash deposit of estimated antidumping duties required from Nakajima, because the margin for Nakajima in the most recent final results of administrative review for that company is *de minimis. See Portable Electric Typewriters From Japan; Final Results Of Antidumping Duty Administrative Review,* 56 FR 14072, April 5, 1991.

This notice is in accordance with section 516(a)(e) of the Tariff Act (19 U.S.C. 1516(a)(e)).

Dated: September 10, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–24086 Filed 10–4–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–404]

Live Swine From Canada; Final Results of Countervailing Duty, Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 26, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (56 FR 29224). We have now completed that review and determined the net subsidy during the period April 1, 1989 through March 31, 1990 to be Can$0.0049/lb. for slaughter sows and boars and Can$0.0932/lb. for all other live swine.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki, Sylvia Chadwick, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 29224) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32880; August 15, 1985). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of live swine from Canada. This merchandise is classifiable under item numbers 0103.91.00 and 0103.92.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1989 through March 31, 1990 and 38 programs: (1) Feed Freight Assistance Program; (2) Agricultural Stabilization Act (ASA)—National Tripartite Stabilization Scheme for Hogs; (3) British Columbia Farm Income Insurance Plan-Swine Producer's Farm Income Stabilization Program (FIIP); (4) Quebec Farm Income Stabilization Insurance Programs (FISI); (5) Saskatchewan Hog Assured Returns Program (SHARP); (6) Alberta Crow Benefit Offset Program; (7) Alberta Livestock and Beeyard Compensation Program (Livestock Predator Compensation Sub-program); (8) Alberta Farm Water Grant Program; (9) British Columbia (B.C.) Feed Grain Market Development Program; (10) Ontario Farm Tax Rebate Program; (11) Ontario Pork Industry Improvement Plan (OPIIP); (12) Ontario Dog Licensing and Livestock and Poultry Compensation Program; (13) Ontario Rabies Indemnification Program; (14) Ontario Soil Conservation and Environmental Protection Assistance Program (Manure Storage Subprogram); (15) Quebec Productivity Improvement and Consolidation of Livestock Production Program; (16) Saskatchewan Livestock Investment Tax Credit; (17) Saskatchewan Livestock Facilities Tax Credit Program; (18) New Brunswick Livestock Incentives Program; (19) New Brunswick Agricultural Development Act—Swine Assistance Program; (20) New Brunswick Hog Marketing Program; (21) New Brunswick Swine Industry Financial Restructuring Program; (22) Ontario Bear Damage to Livestock Compensation Program; (23) Newfoundland Weanling Bonus Incentive Policy; (24) Newfoundland Hog Price Stabilization Program; (25) Nova Scotia Swine Herd Health Policy; (26) Nova Scotia Improved Sire Policy; (27) Prince Edward Island Hog Price Stabilization Program; (28) Prince Edward Island Swine Development Program; (29) Prince Edward Island Interest Payments on Assembly Yard Loan; (30) Ontario Export Sales Aid; (31) Western Diversification Program; (32) Federal Atlantic Livestock Feed Initiative; (33) Canada-Saskatchewan Agri-Food Development Agreement; (34) Canada-Manitoba Agri-Food Development Agreement; (35) Agricultural Products Board Program; (36) Canada-Ontario Canadian Western Agribition Livestock Transportation Assistance Program; (37) Prince Edward Island Swine Incentive Policy; and (38)

New Brunswick Swine Assistance Policy on Boars.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Case briefs were timely submitted by the petitioner, the National Pork Producers Council (NPPC), and by four of the interested parties, the Government of Quebec (GOQ), the Canadian Pork Council (CPC), P. Quintaine & Son Ltd., of Brandon, Manitoba (Quintaine), and Pryme Pork Ltd., of St. Malo, Manitoba (Pryme). Rebuttal briefs were timely submitted by the NPPC, the GOQ, the CPC, and Pryme. At the request of the NPPC, the GOQ, the CPC, Pryme, and Quintaine, we held a public hearing on August 9, 1991.

Comment 1: CPC argues that petitioner's request for review should have been rejected because it was improperly filed. Therefore, the Department's initiation of this administrative review is invalid and the review should be terminated.

NPPC rebuts that its review request was properly accompanied by a certificate of service and that failure of delivery does not negate service. NPPC further states that no parties were prejudiced by any purported failure of service.

Department's Position: We disagree with the CPC. There is no requirement under the Department's regulations that a request for an administrative review be served on other interested parties. CPC's citation to the service requirements for "factual information" in 19 CFR 355.31(g) is inapposite. On August 17, 1990, we received a timely request for review from the NPPC. Based on this request, we published a notice in the **Federal Register**, in accordance with 355.22(c), stating that a review had been initiated.

Comment 2: CPC disagrees with the Department's finding that the National Tripartite Price Stabilization Scheme (Tripartite) is *de facto* specific. According to CPC, the Department's determination that selective treatment exists and Tripartite is countervailable is not based on the record of this review. CPC further alleges that the Department ignored relevant information provided by the Government of Canada.

CPC argues that the Tripartite Scheme does not meet the "specificity test" set forth in § 355.43(b)(2) of the Department's proposed regulations. With regard to selective treatment, the CPC contends that the Department has not defined "enterprise" or "industry" in the context of this review. Instead the Department has focused too narrowly on the number of commodities for which there are already finalized Tripartite agreements, and not recognized Tripartite as a relatively new program with an expanding number of plans. Furthermore, the Department has not attempted to analyze the *de facto* specificity of Tripartite as the binational panel instructed it must (See, Memorandum Opinion and Order, *In the Matter of Fresh, Chilled, and Frozen Pork*, United States-Canada Binational Panel Review, USA-89-1904-06, September 28, 1990 (hereinafter *Pork*)).

With regard to the existence of dominant users or disproportionate benefits, the CPC argues that the Department's analysis of dominance is incomplete because the Department has made no attempt to define the universe in which dominant users (or disproportionate benefits) are to be measured. While hog producers may indeed have received more benefits than other commodities, they have contributed more to the Tripartite fund than any other producers. Furthermore, CPC claims that the Department fails to recognize the effect of the hog cycle on Tripartite payouts by not taking into account those review periods when no payouts were made to hog producers. To put in context the amount of benefits received by hog producers with respect to other commodities, CPC suggests that the Department use farm cash receipts statistics.

With regard to the extent of government discretion in conferring benefits, CPC argues that the Department cites to nothing in the record of this review to support the statement that there are no explicit or standard procedures and criteria for evaluating Tripartite agreement requests and that there is no evidence that Tripartite agreements involve undue governmental discretion.

NPPC agrees with the Department's analysis of disproportionality and contends that the proportion of producer premiums paid into the Tripartite fund is irrelevant in this context because the Department's concern is with government money paid to producers, not with the producers' own contributions. NPPC states that the Department is directed to calculate the extent of subsidization provided to a particular industry, not the relative value of government subsidies to individual industries. Differences in the size of the industry or the value of the product are captured in the duty rate, which is applied on an *ad valorem* basis. In support of its claim that the Government of Canada exercised discretion with respect to awarding Tripartite agreements, NPPC notes that three commodities, asparagus, sour cherries, and corn, applied for Tripartite agreements and were rejected. Although this information was obtained in the course of another proceeding, petitioner claims that the Department has full authority to place this information in the record of this proceeding.

Department's Position: The Department addressed the *de facto* specificity issue of the Tripartite program in *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (56 FR 28531; June 21, 1991; hereinafter *Live Swine Final Results*). In that notice, we specifically stated that, in conducting its specificity analysis, the Department looks at the actual number of commodities covered during the particular period under review and that the Department has no authority to take into account predictions about the future expansion of the Tripartite program.

With regard to specificity analysis, in *Pork* the binational panel asked the Department to determine the predictable number of products or enterprises that would be expected to apply for a Tripartite agreement in light of the availability of alternative types of aid and the relevant economic conditions of the covered industries. However, in the course of the same proceedings, the panel subsequently recognized the complexities involved in such analysis and accepted the Department's rationale as sufficient to justify its findings.

With regard to the existence of dominant users, we agree with petitioners that the Department is directed to calculate the extent of subsidization provided to a particular industry, not the relative value of government subsidies to individual industries. In fact, the hog producers accounted for a dominant share of all federal Tripartite contributions in each review period since 1986-87. Furthermore, the same producers accounted for over 81 percent of the total payouts made in all agreements in FY 1989-90, and 72 percent of total payouts in all schemes since the inception of the program. On this basis, the Department found that the hog producers were dominant users of this program. For those years in which hog producers did not receive any payouts, while still finding the program countervailable, the benefits accruing to the producers are not quantifiable and therefore no benefit rate is calculated.

With respect to government discretion, we cited in the preliminary notice of this review and in prior reviews "conditions" outlined in the ASA that indicate under what general

circumstances the government may enter into agreements with provinces or producers, or provinces and producers, to provide price stabilization schemes for any agricultural commodity. Specifically, the legislation states that the Minister of Agriculture "may" enter into agreements that will not give some producers an advantage over others or be an incentive to overproduce. However, those are broad principles that "may" be taken into account in entering into agreements. The record is silent with regard to specific criteria used to evaluate applications and select producers/enterprises for Tripartite agreements.

Based on the record in this review, only 11 out of more than 100 agricultural commodities receive Tripartite benefits; hog producers were dominant users of this program; and no explicit or standard criteria for evaluating Tripartite agreement requests were submitted to the Department. We therefore continue to find the Tripartite agreement countervailable because it is limited to a specific group of enterprises or industries.

Comment 3: CPC asserts that the payments made under the Alberta Crow Benefit Offset Program (ACBOP) are inseparably linked with the federal government Crow Benefit payments made under the Western Grains Transportation Act (WTGA). Because the ACBOP payments only compensate for disadvantages caused by a mandated federal government program, payments made from ACBOP are not countervailable. The Department has found that no countervailable subsidy exists when the benefits of one governmental program merely counteract the disadvantages of a related program, thus resulting in no overall "economic benefit" (*See, Final Affirmative Countervailing Duty Determination; Certain Steel Products from the Federal Republic of Germany,* 47 FR 39345; September 7, 1982). CPC also contends that this program is designed for feed grains, not for livestock feed. Consequently, any benefit would flow to an input in the hog production process. Therefore, an upstream subsidy investigation would be necessary to measure the benefit, if any, to hog producers.

CPC further argues that the methodology used by the Department to calculate the amount of benefit is based on an inappropriate and unreliable source and contains a significant error. By asserting that 3.5 pounds of grain, not feed, are required to produce one pound of weight gain, the Department has significantly overstated the amount of grain consumed by hogs in Alberta. CPC contends that although other information exists that CPC believes is more accurate, the Department rejected such information as untimely in the 1988–89 review. CPC did not have the opportunity to present that information in this review, because the preliminary notice was issued immediately after the 1988–89 final determination.

NPPC argues that the Department has previously rejected the same arguments on the countervailability of ACBOP in *Live Swine Final Results.* NPPC further argues that the fact that Alberta's feed grain users would pay significantly less for grain if the federal Crow Benefit program did not exist is irrelevant to the question of whether ACBOP is countervailable. Because the federal program affects all of the grain produced and consumed in Alberta, absent ACBOP, all Alberta grain users would pay the same price for grain. With ACBOP, however, feed grain users pay substantially less than all other grain users.

NPPC maintains that the Department's reliance on a U.S. Department of Agriculture (USDA) publication for an appropriate grain-consumption-to-weight-gain ratio is reasonable; however, NPPC point out that there is a clerical error in the Department's calculation concerning the amount of grain fed to livestock in Alberta.

Department's Position: The Department fully addressed the same arguments on the countervailability of ACBOP, the need for an upstream subsidy investigation, and the USDA document used in support of our calculations of the benefits from this program in *Live Swine Final Results.* In that notice the Department stated that the fact that a program is designed to offset the economic effect of another government program does not exempt it from investigation under countervailing duty law. Furthermore, the Department stated that it is not required to conduct an upstream subsidy analysis in this case, because the countervailed benefits are paid directly to hog producers, thus reducing their production costs. Finally, the Department explained that it continued to use the USDA document because the information obtained at verification was inadequate. The CPC has submitted no new information regarding this program; therefore, our determination that this program is limited to a specific group of enterprises or industries, and is therefore countervailable, remains unchanged. We have corrected the clerical error concerning grain fed to livestock in Alberta; this adjustment does not alter the amount of the benefit.

Comment 4: CPC argues that the Feed Freight Assistance Program (FFA) is not a countervailable subsidy. FFA benefits are provided to grain users (commercial mills and livestock producers) with regard to the manufacture of feed from grain. Feed grain is obviously a different product from live swine. There is no evidence that the grain is imported into the United States. CPC argues that to countervail benefits paid to producers of feed grain for livestock, the Department would have to conduct a separate investigation or an upstream subsidy analysis.

Furthermore, the CPC maintains that the Department's calculation methodology is in error. CPC states that the percent of FFA benefits countervailed by the Department is based on the Livestock Feed Board's estimate of payments made to livestock producers who indicated that they raise hogs and, therefore, is not necessarily representative of the actual amount of grain fed to hogs. In addition, the two-thirds of Ontario production and all of Quebec production included in the FFA calculations significantly overstate the number of counties in those provinces which are eligible for FFA. According to the CPC, the percentages of one-fourth of Ontario production and one-half of Quebec production would reflect more accurately the production of the areas currently eligible for FFA.

Finally, CPC requests that the description of the program in the preliminary determination be amended to better reflect the language of the Livestock Feed Assistance Act of 1966. The Board action described in the preliminary results should be revised as follows: "The Board acts to insure * * * (4) fair equalization of feed grain prices in Eastern Canada, British Columbia, the Yukon, and Northwest Territories." In addition, the preliminary determination states that "(t)he Board makes payments related to the cost of feed grain storage * * *" CPC points out that while the Board is authorized to make such payments, none were made during the review period.

Department's Position: The arguments raised by the CPC regarding the countervailability of FFA and the need for an upstream subsidy investigation have been fully addressed in *Live Swine Final Results.* As the Department stated in that notice, the FFA benefits paid to feed producers who indicate that they raise live swine are countervailable because they result in reduced costs for live swine producers. For this reason, no

upstream subsidy investigation is required.

With regard to the calculation methodology used by the Department, we used the share of benefits paid to feed grain users who raise hogs as "best information available" in absence of more precise information to determine the actual amount of grain consumed in the production of hogs. Regarding areas eligible for FFA, CPC failed to provide the Department with documentation supporting the proposed percentages. It is not readily apparent, for instance, why seven counties out of 49 in Ontario are covered by FFA, and yet CPC proposes one-fourth of Ontario production as the correct representation. We are therefore unable to take CPC's suggestion into consideration in these final results.

For these reasons, the amount of benefit received from this program remains unchanged. We have, however, taken note of the amendments proposed by the CPC in the language describing the program.

Comment 5: CPC argues that the Department should characterize the countervailing benefit to swine resulting from the Ontario Farm Tax Rebate Program in the same method as in previous reviews, namely as a regional subsidy within the province.

Department's Position: We agree with CPC that this program provides a provincial regional subsidy and that the only countervailable benefit is to farmers in eastern and northern Ontario whose annual output is at least Can$5,000 but less than Can$8,000. Our calculations reflect this determination.

Comment 6: CPC argues that the British Columbia Farm Income Insurance Program (FIIP) does not provide countervailable benefits to hog procedures because it is generally available to producers of any viable commodity with an interest in and demonstrated need for such programs. CPC also states that because over 80 percent of the farm cash receipts for the province are provided by commodities participating in FIIP, supply management, or crop insurance, enormous changes in the identity of FIIP producers are unlikely. The Department can cite to no affirmative evidence in the record that the B.C. Ministry of Agriculture has denied FIIP coverage to any commodity, nor that such denial involved undue discretion. With regard to the issue of the integral linkage between FIIP, supply management, and crop insurance, CPC argues that once one type of program is chosen, the others become superfluous to any particular producer group. In addition, CPC asserts that there is no supporting evidence on the record that income stabilization programs encourage production.

NPPC argues that if the program were generally available, there would be no need for the Schedule B guidelines to the Farm Income Insurance Act of 1973, which list all products whose producers are eligible to receive benefits under this program. NPPC argues that FIIP, crop insurance, and supply management programs are different programs with different aims and market effects, and that income stabilization programs do encourage farmers to produce more than they would in a totally free market because they guarantee farmers a certain return on their covered commodities regardless of actual market conditions.

Department's Position: We have addressed the issue of the general availability of FIIP in *Live Swine Final Results*. In that notice, the Department found that the program is limited to a specific group of enterprises or industries, and, therefore, is countervailable, because it is only available to farmers producing commodities specified under Schedule B guidelines to the Farm Income Insurance Act of 1973. Therefore, since this program is *de jure* specific, no determination is undue government discretion is required.

In the same notice, the Department also stated that, "it is our view that crop insurance and supply management are sufficiently different so as to make the linkage with FIIP inappropriate." Our reasoning was based on an analysis of the economic effects of these programs. Supply management programs aim to stabilize the market price of a commodity by restricting its supply to the market; crop insurance and income stabilization tend to stabilize the production of a commodity at levels higher than what would occur in a totally free market, because they offset income losses to the farmers, due either to natural disasters or downward fluctuations in the market price. The CPC has submitted no new information for the Department's consideration of this issue and therefore we stand by our preliminary determination that FIIP is countervailable.

Comment 7: CPC argues that the British Columbia Feed Grain Market Development Program is not countervailable because, like the Alberta Crow Benefit Offset Program, it attempts to counteract the disadvantage to B.C. grain producers and feed users, including hog producers, caused by the Western Grains Transportation Act.

Department's Position: We have fully addressed the countervailability of the British Columbia Feed Grain Market Development Program in *Live Swine Final Results*. In that notice, we stated that this program is limited to grain producers and grain users in British Columbia and thus is limited to a specific group of enterprises or industries. CPC has submitted no new information regarding this program, and therefore our determination of countervailability remains unchanged.

Comment 8: CPC argues that benefits received under the Ontario Soil Conservation and Environmental Protection Assistance Programs (OSCEP) are not countervailable. CPC maintains that the Department inaccurately described this project as a separate program when, in fact, it is part of the OSCEP which is generally available to all provincial farmers producing agricultural products having a gross value of at least Can$12,000. CPC asserts that the eligibility requirement of a minimum gross value insures that all applicants are commercially viable farms, and that the existence of an eligibility requirement does not automatically imply a countervailable program.

Department's Position: We have reexamined this program and find that the OSCEP is *de jure* available to all farmers in the province. However, no information was provided to indicate that the program is *de facto* generally available. For this reason, the Department is deferring the determination of the countervailability of this program until the next review. This decision has no effect on the overall benefit found in this review, because the benefit calculated for this program in the preliminary determination was effectively zero.

Comment 9: The Government of Quebec (GOQ) argues that the evidence on the record is contrary to the Department's conclusion that the Quebec Farm Income Stabilization Insurance (FISI) program is countervailable. In fact, according to the GOQ, the record shows that 87.8 percent of the total value of Quebec's farm production is insured under either FISI or crop insurance, and 79.2 percent is insured under FISI or supply management. Therefore, the Department failed to take into account in its determination all information provided on the record. GOQ further states that the Department's determination is not supported by substantial evidence. The fact that a specific number of commodities enroll in FISI and others do not does not constitute evidence to the GOQ, why some producers do not enroll in FISI, and demonstrate how or why the

number of commodities enrolled is a fact that proves targeting.

Furthermore, the GOQ claims that the Department has applied an improper test of specificity because the Department failed to draw any regional connection between its alleged fact that FISI has been consistently providing benefits to the same group of commodities over the majority of the program's life, and its finding of specificity and, thus, of countervailability.

Department's Position: We disagree with the GOQ. This is the fifth review of this case in which we have determined that FISI benefits are *de facto* specific to a group of enterprises or industries. As in previous reviews, we noted that the program provides benefits to a relatively limited number of the commodities produced in Quebec (11 schemes covering 15 products) and that products accounting for a large portion of Quebec's agricultural production eggs, poultry, and dairy products) are not covered by this program. In addition to these facts, we noted that this program has been consistently providing benefits to the same group of commodities (with the exception of the addition of soybeans during this period of review) over the last nine years. The Department finds this fact inconsistent with the GOQ claim that FISI is available to all 45 commodities produced in Quebec. In fact, if that were the case, it would be reasonable to expect that over a decade different commodities would have used the program, as the production of individual commodities faced more or less favorable market conditions and different products were affected to varying degrees by natural disasters and economic cycles.

We are not persuaded by Quebec's argument that benefits provided by the supply management and crop insurance programs are relevant to this determination. As we have stated in *Live Swine Final Results*, we continue to believe that supply management and crop insurance are separate programs which are not integrally linked with FISI.

Comment 10: The GOQ argues that the legal principle of estoppel prevents the Department from countervailing FISI on the same evidence and using the same reasoning as in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Fresh Chilled and Frozen Pork from Canada* (54 FR 30774; July 24, 1989). The GOQ contends that the evidence and principles upon which the Department found FISI countervailable have been adjudicated and found to be inadequate by the FTA binational panel in *Pork*, and hence the Department is estopped from relying on the same argument in this review.

NPPC argues that the FTA binational panel decision in *Pork* is not bending in a separate administrative review. Therefore, the Department is not bound by the *Pork* panel decision in its administrative reviews of the order on live swine.

Department's Position: We agree with the NPPC. The Court of International Trade has stated that "the burden on the party seeking issue preclusion is and should be exacting," particularly in trade cases. *PPG Industries, Inc.* v *United States*, 712 F. Supp. 195, 199 (CIT 1989). The ITC determined live swine to be a product distinctly different from fresh, chilled, and frozen pork. (*See, Live Swine and Pork from Canada*, USITC Pub. 1733 at 4.) The decision in this review is based on an administrative record different from that compiled for the investigation reviewed by the binational panel in the *Pork* case. Furthermore, the Department's determination of *de facto* specificity in this case is not based upon facts or reasoning identical to that relied upon in the *Pork* case. See Department's Response to Comment 9.

Comment 11: Pryme argues that weanling pigs (weanlings) do not benefit from specific countervailable grants, bounties, or subsidies, and are therefore not subject to countervailing duties in this case. Specifically, Pryme argues that weanlings are outside the scope of the countervailing duty order because the International Trade Commission's (ITC) definition of "live swine" was based on animals destined for immediate slaughter; therefore, a review of the scope of this order cannot be justified. Furthermore, weanlings are classified under a different subheading of the Harmonized Tariff Schedule than slaughter hogs.

Pryme also argues that if weanlings of less than 40 pounds in weight are not removed from the scope of the order, they should constitute a separate subclass of merchandise, since they are not indexed and do not qualify for subsidies under most of the programs, including Tripartite, covered in the reviews of this order. Therefore there can be no justification for applying to weanlings countervailing duties calculated on the basis of bounties or grants awarded to indexed slaughter hogs. Finally, Pryme argues that, if weanlings are not broken out into a separate subclass and given a separate rate, then the Department should assign Pryme a company-specific rate. Pryme claims that regulatory constraints do not limit the time period for a scope determination, and that the Secretary is directed to calculate a separate rate for producers/exporters when a significant differential exists.

NPPC argues that weanlings are part of the same class or kind of merchandise as live swine, that weanlings do not constitute a separate subclass, and that Pryme has not overcome the presumption against company-specific countervailing duty rates.

Department's Position: First, the Department has already determined that weanlings are included in the scope of this order (*see, Live Swine Final Results* Comment 9). Pryme has submitted no new information which would require the Department to reexamine this issue. Consequently, we stand by our previous determination.

Second, Pryme's request for a separate rate for weanlings was submitted immediately after the publication of the preliminary results of this review. The Department has considered Pryme's request, but determines that further information would be required to reach a determination, and that it would be inappropriate to delay the processing of the reveiw to solicit such information.

Finally, in this review, there is no basis for determining an individual rate for Pryme, since the Department did not request, and was not provided with, company-specific information. In fact, in the reviews of this order, the subsidy calculations are not based on benefits received by individual producers, but on benefits provided to live swine producers on a province-by-province basis; the country-wide rate represents the cumulative benefit provided to all producers exporting live swine to the United States. Pryme did not request a review nor did the questionnaire responses submitted by the Government of Canada contain any company-specific information on Pryme. Thus we have no basis on which to evaluate whether Pryme would even be eligible for a separate rate.

Comment 12: Quintaine argues that sows and boars are outside the scope of the ITC's definition of the industry and hence are not subject to the order. Quintaine claims that the ITC must have intended to exclude all sows and boars from its injury determination, since in the ITC investigation price trends were discussed solely in terms of barrows (castrated male swine) and gilts (unfarrowed female swine). The ITA is therefore under legal obligation to conduct a scope review and exclude sows and boars from the order.

NPPC contends that since the Department already found sows and

boars to be within the scope of the order, the Department has no obligation to initiate a scope review. Furthermore, NPPC points out that in the first review, Quintaine supported the Department's decision to separate slaughter sows and boars into a separate subclass.

Department's Position: In the first administrative review of this order, the Department determined that slaughter sows and boars constitute a separate subclass within the scope of the order. (See, *Live Swine from Canada: Final Results of Countervailing Duty Administrative Review*, 54 FR 651; January 9, 1989). Quintaine has submitted no new information. Therefore our scope determination remains unchanged.

Comment 13: CPC requests that the Department correct its description of the methodology followed in the calculation of benefits provided by the Saskatchewan Livestock Investment Tax Credit and the Saskatchewan Livestock Facilities Tax Credit programs to accurately reflect the actual calculations of the benefit. In fact, in this review the benefit was obtained by dividing the total amount of hog credits issued during the review period by the total weight of live swine (minus sows and boars) produced in Saskatchewan. In previous reviews, the Department had used either actual or estimated hog credits used.

Department's Position: The Department has changed its calculation methodology with regard to the Saskatchewan Tax Credit programs from the preliminary notice. Since Saskatchewan provided the amount of credits issued, but did not provide the amount of hog credits used during the period of review, we are using as "best information available" the ratio of credits claimed to credits issued from five previous years as provided in the 1986–88 review to determine an estimated percentage of credits used during the present period of review. Therefore, the description of our calculation methodology applied to the Saskatchewan Tax Credit programs should read as follows "To calculate the benefit, we divided the estimated total amount of hog credits used by total weight of live swine (minus sows and boars in the Investment Tax Credit Program) produced in Saskatchewan." The changed calculation for the Investment Tax Credit Program resulted in a benefit of $0.00022101 and $0.00004860 for the Livestock Facilities Tax Credit Program.

Comment 14: CPC argues that the Department erred in its conversion of swine prices from a per-kilogram to a per-pound basis in the calculation of the *de minimis* rate. Further, CPC suggests that all numbers used in the determination of the *de minimis* rate be calculated to four decimal places.

Department's Position: We agree with the CPC. We have adjusted our calculations of the *de minimis* rate to accurately report swine prices on a per-pound basis and included all digits to the fourth decimal place in our calculations. The amended *de minimis* rate for slaughter sows and boars is Can$0.0022 and the *de minimis* rate for all other live swine remains Can$0.0030.

Final Results of Review

After reviewing the comments received, we determine the net subsidy for the period April 1, 1989 through March 31, 1990 to be Can$0.0049/lb. for slaughter sows and boars and Can$0.0932/lb. for all other live swine.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of Can$0.0049/lb. on all shipments of slaughter sows and boars, and Can$0.0932/lb. on all shipments of all other live swine, exported on or after April 1, 1989, and on or before March 31, 1990.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0049/lb. on all shipments of slaughter sows and boars, and Can$0.0932/lb. on all shipments of all other live swine, 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. This administrative review 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: September 30, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–24087 Filed 10–4–91; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-601]

Roasted In-Shell Pistachios From Iran; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on roasted in-shell pistachios from Iran. Interested parties who object to this revocation must submit their comments in writing not later than October 31, 1991.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1986, the Department of Commerce (the Department) published a countervailing duty order on roasted in-shell pistachios from Iran (51 FR 35679). The Department has not received a request to conduct an administrative review of the countervailing duty order on roasted in-shell pistachios from Iran for four consecutive annual anniversary months. October 1991 is the fifth anniversary month.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than October 31, 1991, interested parties, as defined in section 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by October 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: September 29, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–24088 Filed 10–4–91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Sacramento, California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal (cost sharing) contributions. Cost-Sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from March 1, 1992 to February 28, 1993. The MBDC will operate in the Sacramento, California Geographic Service Area.

The award number for this MBDC will be 09–10–92005–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian Tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must received at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Government Wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for submitting an application is November 18, 1991. Applications must be postmark on or before November 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing addressee for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. October 30, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of

application kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: October 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91-24037 Filed 10-4-91; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Fastener Quality Act Advisory Committee; Meeting

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of advisory committee meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on October 29 and 30, 1991. The meeting will be for the purpose of providing advice to the Department of Commerce, pursuant to statute, on the implementation of the Fastener Quality Act of 1990 (Public Law 101-592). The meeting is open to the public.

DATES: The meeting will be held on October 29, 1991 from 9 a.m. to 5 p.m., and on October 30, 1991 from 8:30 a.m. to 3 p.m., or earlier if so adjourned.

ADDRESSES: The meeting will be held at the Marriott Courtyard, Frederick I and Frederick II Rooms, 805 Russell Avenue, Gaithersburg, Maryland 20879.

AGENDA: The Advisory Committee will review discussion papers covering issues identified at its last meeting and will review and discuss draft implementing regulations for the Fastener Quality Act.

PUBLIC PARTICIPATION: The meeting is open to the public. All interested persons wishing to attend the meeting must notify the contact person listed in this notice by October 25.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Deputy Director, Technology Services, National Institute of Standards and Technology, Building 221, room A363, Gaithersburg, MD 20899, Telephone (301) 975-4500.

Dated: October 1, 1991.

John W. Lyons,

Director.

[FR Doc. 91-23999 Filed 10-4-91; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment and Elimination of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Czechoslovakia

October 2, 1991.

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

ACTION: Issuing a directive to the Commissioner of Customs amending and eliminating limits.

EFFECTIVE DATE: October 9, 1991.

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

SUPPLEMENTARY INFORMATION:

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

The Governments of the United States and the Czech and Slovak Federal Republic reached agreement, effected by a Memorandum of Understanding (MOU) dated September 17, 1991, to amend and eliminate certain limits. Also, the two governments agreed to extend the current bilateral through May 31, 1993. A formal exchange of notes will follow.

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 56 FR 21132, published on May 7, 1991.

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 September 17, 1991 MOU, 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

October 2, 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 May 2, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1991 and extends through May 31, 1992.

Effective on October 9, 1991, pursuant to a Memorandum of Understanding dated September 17, 1991, you are directed to amend further the directive dated May 2, 1991 to delete Categories 434 and 624. Import charges already made to Categories 434 and 624 shall be eliminated. Further, you are directed to increase the limits for the following categories:

Category	Adjusted twelve-month limit [1]
410	1,600,000 square meters.
433	16,500 dozen.
435	20,000 dozen.
443	160,000 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1991.

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. 91-24081 Filed 10-4-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

October 2, 1991.

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

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

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. 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 Categories 317, 604–A and 611 are being increased for carryover. The limit for Category 604–A is being increased further by application of swing.

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 51755, published on December 17, 1990; and 56 FR 41830, published on August 23, 1991.

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

October 2, 1991.

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

Dear Commissioner: This directive amends, but does not cancel, the directives of December 11, 1990 and August 19, 1991, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the United Mexican States and exported during the period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 2, 1991, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Mexican States:

Category	Twelve-month restraint limit [1]
Level not in a group	
604–A [2]	2,113,142 kilograms.
Sublevels in Group I	
317	13,950,468 square meters.
611	2,210,757 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.
[2] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of 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. 91–24082 Filed 10–4–91; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

October 1, 1991.

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

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

EFFECTIVE DATE: October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

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).

Inasmuch as no agreement has been reached on a mutually satisfactory solution on Category 835, the United States Government has decided to control imports in this category for the prorated period beginning on September 26, 1991 and extending through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 33745, published on July 23, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 1, 1991.

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

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 8, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber apparel in Category 835, produced or manufactured in the Philippines and exported during the period beginning on September 26, 1991 and extending through December 31, 1991, in excess of 5,659 dozen [1].

Textile products in Category 835 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established for the period January 1, 1991 through December 31, 1991.

Imports charged to the category limit for the period June 28, 1991 through September 25, 1991 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

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

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of 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. 91–24083 Filed 10–04–91; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

[1] The limit has not been adjusted to account for any imports exported after September 25, 1991.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in clean air futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 6, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the Chicago Board of Trade clean air futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR part 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR part 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 30, 1991.

Gerald Gay,

Director.

[FR Doc. 91-24043 Filed 10-4-91; 8:45 am]

BILLING CODE 6351-01-M

New York Mercantile Exchange Proposed Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in gulf coast unleaded gasoline futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 7, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYMEX gulf coast unleaded gasoline futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 30, 1991.

Gerald Gay,

Director.

[FR Doc. 91-24044 Filed 10-4-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Description of Vessels—Description of Operations, ENG Forms 3931 and 3932, OMB Control Number 0702-0033.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1 hour.

Responses Per Respondent: 1.

Number of Respondents: 2,000.

Annual Burden Hours: 2,000.

Annual Responses: 2,000.

Needs and Uses: The publication, Waterborne Transportation Lines of the United States (WTLUS) contains information of the vessel operators and their American Flag vessels operating or available for operation on the inland waterways of the United States in the transportation of freight and passengers.

Affected Public: Businesses or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: October 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-24012 Filed 10-4-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces

ACTION: Notice of task force meeting.

SUMMARY: The Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces will meet in closed session on 22-23 October 1991 from 0900 until 1700 at the Science Applications International Corporation (SAIC) Tower, McLean, Virginia.

The mission of the Joint Defense Policy Board/Defense Science Board Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense, Under Secretary of Defense for Policy and the Under Secretary of Defense for Acquisition with independent, informed advice and opinion concerning major matter relating to nonstrategic nuclear force policy and acquisition. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Joint 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: October 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-24011 Filed 10-4-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before November 6, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Civilian Radioactive Waste Management.
2. RW-859.
3. 1901-0287.
4. Nuclear Fuel Data Form.
5. Revision.
6. Annually, On occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 59 respondents.
10. 2.15 responses.
11. 60 hours per response.
12. 7,611 hours.
13. The Form RW-859 collects data to be used by the Office of Civilian Radioactive Waste Management to define, develop, and operate its programs which require information on spent nuclear fuel inventories, generation rates, and storage capacities. Respondents are all owners of nuclear power plants and owners of spent nuclear fuel.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, Oct 1, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-24080 Filed 10-4-91; 8:45 am]

BILLING CODE 6450-01-M

[Dockets PP-92 and PP48-I]

Application to Amend Presidential Permit and Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: El Paso Electric Company has applied for a Presidential Permit in order to construct a new electric transmission line at the U.S./Mexico border, and to amend the existing electricity export authorization contained in Docket No. PP-48-A.

DATES: Comments, protests or requests to intervene must be submitted on or before November 21, 1991.

ADDRESSES: Comments, protests or requests to intervene should be

addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP-92 for the new transmission facilities or PP-48-I for the amendment of the electricity export authorization should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States to a foreign country also are regulated and require authorization under section 202(e) of the Federal Power Act.

On September 5, 1991, El Paso Electric Company (El Paso) applied for a new Presidential permit in Docket No. PP-92 and an amendment to their electricity export authorization contained in Docket No. PP-48-A. In addition, El Paso prepared an environmental assessment of the proposed actions described herein.

In Docket No. PP-92 El Paso proposes to construct a new 2.34-mile long, 115-kilovolt (kV), transmission line extending from its existing Diablo Substation in Sunland Park, New Mexico, southward to the U.S. border with Mexico. El Paso has proposed that the first 1.56 miles of the planned facility, leading from the Diablo Substation, be a double circuit, single pole configuration that will parallel an existing 345-kV facility. El Paso claims that it plans to add the second circuit to this facility at a later date to supply electrical needs in the Santa Teresa area. The remaining .78 miles will be a single circuit structure.

In its application El Paso described the electricity interconnection agreement between itself and Comision Federal de Electricidad (CFE), Mexico's national electrical utility. CFE is upgrading its system in the Juarez area from 69-kV to 115-kV operation. CFE and El Paso are currently linked by two interconnections: one at 115-kV and one at 69-kV. The existing 115-kV transmission interconnection which extends from the Ascarate Substation was converted from 69-kV operation pursuant to an amendment of Presidential Permit PP-48 issued by the DOE on December 13, 1990. In order to be compatible with the CFE system and be able to maintain the electrical interconnections, El Paso is proposing to construct this new 115-kV facility and, upon its completion, to remove its existing 69-kV interconnection extending from El Paso's Rio Grande Substation, which was authorized by PP-48.

El Paso has also requested that the electricity export authorization contained in PP-48-A be amended to provide for an increase in the rate of transmission from 150,000 kilowatts (KW) to 200,000 KW.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the rules of practice and procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Eduardo Rodriguez, Esquire, Secretary and General Counsel, El Paso Electric Company, Post Office Box 982, El Paso, Texas 79960.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on the instant applications after a determination is made by the DOE that the proposed actions will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before a Presidential permit or export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the Presidential permit and export authorization, with any conditions and limitations, or denying them) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, nonadversarial process involving members of the public, State governments and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the Federal Register, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, room 3F070, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 1, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-24079 Filed 10-4-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER84-75-013, et al.]

Southern California Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 1, 1991.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Co.

[Docket No. ER84-75-013]

Take notice that on August 23, 1991, Southern California Edison Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Brush Cogeneration Partners

[Docket No. QF89-7-001]

On September 13, 1991, Brush Cogeneration Partners (Applicant), of 303 East Seventeenth Street, suite 1070, Denver, Colorado 80203, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Brush, Colorado. The facility was scheduled to be constructed in two phases. Phase I was completed and commenced operation on October 31, 1990. The original certification was issued on May 8, 1989, (47 FERC ¶ 62,134 (1989)).

The instant recertification is requested due to the following changes made in Phase II of the facility: (1) The Applicant is changed from Colorado Power Partners to Brush Cogeneration Partners; (2) the number of combustion turbine generators is reduced from two to one; (3) the size of the greenhouse is reduced from 24 acres to 18 acres; and (4) CSW Development-I, Inc. and Noah I Power GP, Inc., both are subsidiaries of Central and South West Corporation, a registered holding company under the Public Utility Holding Company Act of 1935, will have an ownership interest in the facility.

Comment date: November 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. March Point Cogeneration Co.

[Docket No. QF91-221-000]

On September 10, 1991, March Point Cogeneration Company (Applicant), of Post Office Box 622, Anacortes, Washington 98221, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Texaco Refining and Marketing Inc. Puget Sound Refinery near Anacortes, Washington, and will be constructed in two phases. In Phase I the facility will consist of two combustion turbine generators and two heat recovery boilers (HRBs) and in Phase II it will consist of three combustion turbine generators, one HRB and a steam turbine generator. Thermal energy recovered from the facility will be used for petroleum refining process which includes tank heating, line tracing and distillation tower heating. The maximum net electric power production capacity of the facility will be 86 MW and 150 MW for Phases I and II, respectively. The primary energy source will be natural gas. Installation of Phase I began in August 1990.

Comment date: November 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24136 Filed 10-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-952-000]

Algonquin Gas Transmission Co.; Intent To Prepare an Environmental Assessment for the Edgar Energy Park Lateral Project and Request for Comments on its Scope

October 4, 1991.

Introduction

Algonquin Gas Transmission Company (Algonquin) has filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to provide up to 65,500 MMBtu per day to the planned Edgar Energy Park Project at Boston Edison Company's (Boston Edison) Edgar Station Site in Weymouth, Massachusetts. In order to provide such service, Algonquin proposes to construct and operate 10.7 miles of 24-inch-diameter pipeline through the towns of Avon, Stoughton, Randolph, Braintree and Weymouth, Massachusetts, and construct and operate a meter station on the planned Edgar Energy Park Project site in Weymouth.

Notice is hereby given that the Federal Energy Regulatory Commission (FERC) staff will prepare an environmental assessment (EA) on the facilities proposed in the above docket pertaining to the Edgar Energy Park Lateral Project.

Proposed Facilities

The proposed route would begin at approximately milepost (MP)— 3.0 on the existing Algonquin I2L-16-inch-lateral pipeline, which is located approximately 100 feet east of Route 24 at the intersection of the existing pipeline and an old railroad grade in Avon. From MPs 0.0 to 4.4 the proposed pipeline would be constructed within an abandoned railroad easement with the exception of MPs 1.5 to 1.7 where the pipeline would be constructed within Bittersweet Lane and Highland Glen Drive in the town of Randolph. The pipeline would be constructed within new right-of-way between MPs 4.4 and 5.1 and MPs 5.6 and 5.8. From MPS 5.1 to 5.6 the proposed pipeline would be constructed within Devon Woods Road. Between MPs 4.4 and 5.5 the proposed pipeline would across a state area of critical environmental concern (ACEC), the Braintree Town Forest, and through areas which contain state-listed rare wetlands wildlife. At MP 5.8 the route would parallel Boston Edison's electric transmission line right-of-way to the Weymouth Fore River at MP 10.0 Between MPs 8.0 and 9.0 in the town of Weymouth, the proposed pipeline would potentially cross a former town landfill and a Massachusetts Department of Environmental Protection hazardous waste site. At MP 10.0 the proposed route crosses the Weymouth Fore River. At the terminus (MP 10.7) of the pipeline Algonquin proposes to construct a meter station on the planned Edgar Park Project site.

Algonquin has also evaluated an alternative for a portion of the proposed route. The alternate route would be approximately 4.5 miles long through the towns of Avon, Randolph, Holbrook, and Braintree. The alternate route would start at MP 0.5 along the proposed pipeline route in Avon and parallel an existing Boston Edison electric transmission line right-of-way until it rejoined the proposed route at MP 5.6. In the town of Braintree the alternate route would cross conservation land, areas which contain state-listed rare wetlands wildlife, and an ACEC.

The proposed and alternate pipeline facilities and meter stations, as well as

environmentally sensitive areas, are shown in Figure 1.[1]

Construction Procedures

Construction of the pipeline would follow standard pipeline construction methods such as right-of-way clearing and grading, trenching, pipe stringing, bending, welding, joint coating, and lowering in; backfilling of the trench; and cleanup and restoration. Algonquin proposes to implement erosion control and revegetation measures and to utilize special construction techniques for wetland and water crossings. Algonquin proposes to use directional drilling to cross the Weymouth Fore River. Major road crossings would be bored. These construction procedures and mitigation plans will be discussed further in the EA.

Generally, construction of the pipeline would require a construction right-of-way ranging in width from 66 to 75 feet. Directional drilling of the Weymouth Fore River would require one 200 by 400 foot temporary staging area on each side of the river. New permanent right-of-way would range from 0 to 50 feet wide. The meter station would be constructed at the previously developed Edgar Station site and, therefore, would not require the disturbance of any additional land.

In order to minimize construction impacts, Algonquin states that the proposed pipeline would be, to the extent practicable, constructed on or adjacent to existing rights-of-way. Approximately 4.0 miles would be constructed within an existing abandoned railroad right-of-way in the towns of Avon, Stoughton, Randolph, and Braintree. Approximately 4.8 miles would be constructed adjacent to Boston Edison's electric transmission line right-of-way. Where feasible, Algonquin proposes to construct within Boston Edison's right-of-way.

New pipeline segments would be hydrostatically tested prior to being placed in service according to Algonquin and U.S. Department of Transportation minimum safety standards and specifications. No chemicals would be used during testing. Algonquin would obtain appropriate Federal and state discharge permits prior to testing.

[1] The figure referred to in this notice is not being printed in the **Federal Register**, but has been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208–1371.

Current Environmental Issues

The EA will address the environmental concerns identified by the FERC staff, intervenors, and concerned resource agencies and individuals. The following issues have been identified for consideration in the EA:

Biological Resources—Impact of the project on threatened or endangered species, including an area of state-listed rare wetlands wildlife.
—Impact on wetlands and fisheries.
—Habitat alteration.

Cultrual Resources—Effect of the project on properties listed on or eligible for listing on the National Register of Historic Places.

Land Use—Impact on residences, state area of critical environmental concern, conservation lands, and the Braintree Town Forest.
—The extent of utilization of existing electrical transmission line and roadway rights-of way for pipeline construction and operation.
—Impact on crossing know and potential hazardous waste sites.

Water Resources—Impact of wetland, stream and river crossings, including Weymouth Fore River and Cochato River.
—Effect of construction on potable water supplies.
—Impact of Cochato River crossing on surface and groundwater quality due to the potential for resuspension of contaminated river sediment.

Soils and Vegetation—Erosion control and right-of-way revegetation.
—Potential for excavating contaminated soils when crossing hazardous waste sites.

Alternatives—Alternate routes to minimize or eliminate the crossing of the Braintree Town Forest and other environmentally sensitive areas.

Comment Procedures

A copy of this notice and request for comments on environmental issues has been sent to Federal, state and local environmental agencies, parties to this proceeding, and the public. Comments on the scope of the EA should be filed as soon as possible but no later than November 4, 1991. All written comments must reference Docket No. CP91–952–000 and be addressed to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments should also be sent to: Ms. Laura Turner, Environmental Project Manager, Federal Energy Regulatory Commission, room 7312, 825 North Capitol Street, NE., Washington, DC 20426.

Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the FERC staff's independent analysis of the proposal and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Organizations and individuals receiving this "Notice of Intent to Prepare an Environmental Assessment" have been selected to ensure public awareness of the Edgar Energy Park Lateral Project and public involvement in the review process under the National Environmental Policy Act. The EA will be sent automatically to addresses on the Federal Energy Regulatory Commission's official service list for this project, and to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the EA will only be distributed to those other organizations, local agencies, and individuals who return the attached sheet, preferably within 45 days of this notice.

Additional information about the proposal, including detailed route maps for specific locations, is available from Ms. Laura Turner, telephone (202) 208–0916.

Lois D. Cashell,

Secretary.

Attachment—Information Request

I wish to receive subsequent published information regarding the environmental analysis being conducted for the Edgar Energy Park Lateral Project.

Name/Agency

Address

City State Zip Code

[FR Doc. 91–24025 Filed 10–4–91; 8:45 am]

BILLING CODE 6717–01–M

South Carolina Electric and Gas Co., et al; Application Filed With the Commission

October 1, 1991.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Application to Amend Exhibit R (recreation plan) of the Project License.

b. *Project No:* 1894–193.

c. *Date Filed:* September 4, 1991.

d. *Applicant:* South Carolina Electric and Gas Company.

e. *Name of Project:* Parr Shoals Project.

f. *Location:* Fairfield County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randolph R. Mahan, Esquire, South Carolina Electric and Gas Company, Legal Department, Room 106, Columbia, SC 29218, (803) 748–3538.

i. *FERC Contact:* Dan Hayes, (202) 219–2660.

j. *Comment Date:* November 15, 1991.

k. *Description of Project:* South Carolina Electric and Gas Company has filed an application to amend exhibit R of its license to include the Company's land use management plan, titled "Project 1894 Land Use and Shoreline Management Plan" (plan). The plan will restrict development of the project shoreline at both the Parr and Monticello Reservoirs to unpaved footpaths to the water's edge. The plan contains restrictions on clearing or cutting vegetation on project lands, and construction of boat docks or other appurtenances. The licensee states that implementation of the plan will protect the environmental resources of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "**COMMENTS**," "**RECOMMENDATIONS FOR TERMS AND CONDITIONS**," "**NOTICE OF INTENT TO FILE COMPETING APPLICATION**," "**COMPETING APPLICATIONS**," "**PROTEST**" or "**MOTION TO INTERVENE**," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Compliance and Administration, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1165UCP, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24024 Filed 10–4–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD91–09924T Texas–11 Addition 6]

State of Texas; Determination Designating Tight Formation

September 30, 1991.

Take notice that on September 18, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox (Sand 5) Formation, the Sand 5 member of the Wilcox Formation in McMullen County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA) The subject reservoir is designated either the West Rhode Ranch (Sand 5) Field, the Southwest Rhode Ranch (FB–B) Field, or the Rhode (10,600 Wilcox) Field by Texas within the area of application. The designated geographical area covers approximately 2,542 acres and is delineated by faults to the east, south and west, and by the southern border of the F. Tiblier Survey, A–834 (Section 28), the L.E.M. Spalding Survey, A–908 (Section 26), the M.F. Lowe Survey, A–888 (Section 22), and the H & GN RR Co. Survey, A–239 (Section 21) to the north. The designated area consists of portions of the following sections of land:

Survey name	Abstract	Section
Seale & Morris	A–437	17
G. Frasch	A–871	82
L.E.M. Spalding	A–909	84
S.K. & Kyle	A–449	81
L.E.M. Spalding	A–910	86
A. Spalding	A–913	78

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox (Sand 5) Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–24026 Filed 10–4–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–1–63–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 30, 1991.

Take notice that on September 26, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twenty-First Revised Sheet No. 8
Twenty-First Revised Sheet No. 9

Carnegie states that pursuant to § 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483–A, it is proposing an Out-of-Cycle PGA to reflect significant rate changes in the cost of spot gas supplies available on and after October 1, 1991. The revised rates are proposed to become effective October 1, 1991, and reflect a $0.0650 per Dth increase in the

commodity component of Carnegie's sales rates under Rate Schedules LVWS, LVIS, and CDS, as compared to Carnegie's last fully-supported PGA filing in Docket Nos. TA91-1-63-001, *et al.*

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211 (1991). All such protests should be filed on or before October 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-24023 Filed 10-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-2-001 and TM92-1-2-000]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 30, 1991.

Take notice that East Tennessee Natural Gas Company (East Tennessee) on September 25, 1991, tendered for filing First Revised First Revised Sheet Nos. 6 and No. 7 to Original Volume No. 1A of its FERC Gas Tariff to be effective October 1, 1991. East Tennessee states that it inadvertently failed to submit these sheets with its filing made on August 30, 1991 in the above-referenced dockets.

East Tennessee states that the purpose of the filing is to reflect the new Annual Charge Adjustment (ACA) that is shown on the tendered sheets.

East Tennessee certifies that copies of the cover letter to the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-24019 Filed 10-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES91-45-001]

El Paso Electric Co., Amended Application

September 30, 1991.

Take notice that on September 27, 1991, El Paso Electric Company (Company) filed an amendment to its application in Docket No. ES91-45-000 with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act. By this amended application, El Paso is seeking authority to issue, incur and secure up to but not to exceed $250 million aggregate principal amount of debt obligations outstanding at any one time and from time to time, none of which will be issued after December 31, 1993. The borrowings would include (A) borrowings under the Company's $150 million secured revolving credit facility proposed to be extended to December 31, 1993, (B) up to $100 million of borrowings under a proposed secured bridge financing facility to mature December 31, 1992, and (C) other secured and unsecured promissory notes, commercial paper and obligations with maturities not in excess of one year. It is proposed that the bridge financing facility include collateral for obligations under the that facility and for designated obligations to existing creditors of the Company who elect to participate in the bridge facility. The collateral would consist of a pledge of accounts receivable of the Company, first, second and third mortgage bonds of the Company, and a pledge of all other unencumbered personal property of the Company excepted from the coverage of the Company's first and second mortgage indentures.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules of 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). all such motions or protests should be filed on or before October 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-24021 Filed 10-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES91-46-001]

El Paso Electric Co.; Amended Application

September 30, 1991.

Take notice that on September 27 1991, El Paso Electric Company (Company) filed an amendment to its application in Docket No. ES91-46-000 with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act. By this amended application, El Paso is seeking authority:

(a) To issue up to $425 million aggregate principal amount of fourth mortgage bonds and fifth mortgage bonds on the Company's utility property as collateral obligations to secure presently unsecured indebtedness and other obligations.

(b) To grant to the bank which issued for the account of the Company the $69.3 million letter of credit supporting the Company's financing of $63.5 million of pollution control bonds (the "Pollution Control Bonds") an option to purchase the Pollution Control Bonds upon the occurrence of:

(i) A failed remarketing of the Pollution Control Bonds, or

(ii) An optional or mandatory redemption of the Pollution Control Bonds, or

(iii) An event of default and acceleration of the Pollution Control Bonds.

(c) To grant a subordinate security interest in the proposed fourth and fifth mortgage bonds to the beneficiaries of letters of credit issued in connection with the Company's Palo Verde Nuclear Generating Station sales/leasebacks, to secure the Company's reimbursement obligations under such letters of credit.

(d) To extend the maturity of the Company's:

(i) $25 million unsecured promissory note payable to Bank of America from its present maturity of January 3, 1992, to December 31, 1993, and to maintain such borrowing, as so extended, on the terms

and conditions described in the Company's application.

(ii) $9.8 million promissory note payable to Rio Grande Resources Trust (RGRT) from its present maturity of December 31, 1991, to December 31, 1993, and to maintain such borrowing, as so extended, on the terms and conditions described in the Company's application.

(iii) Fuel oil financing indebtedness, through an independent trust, and the Company's assumption of liability for such indebtedness, not to exceed $10 million, from its present maturity of November 30, 1991, to December 31, 1993, and to maintain such borrowing, as so extended, on the terms and conditions described in the Company's application.

(iv) Nuclear fuel financing facility to RGRT, the independent trust which acquires and finances nuclear fuel for the Company for use at Palo Verde Nuclear Generating Station, from its present maturity of January 8, 1993, to December 31, 1993, and maintain such facility, as so extended, on the terms and conditions described in the Company's application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-24022 Filed 10-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-37-018]

High Island Offshore System; Report of Refunds

September 30, 1991.

Take notice that on September 12, 1991, High Island Offshore System (HIOS) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report in compliance with provisions of the Commission's August 13, 1991 Letter Order issued in Docket No. RP89-37-017. HIOS states that the report summarizes interest amounts paid by HIOS to its shippers. The interest relates to a refund amount HIOS received from ANR Pipeline Company and flowed through to its shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-24020 Filed 10-4-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/29B; 3945-5]

Inorganic Arsenicals; Preliminary Determination to Cancel Registration of Pesticides Containing Inorganic Arsenicals Registered for Non-wood Preservative Use: Availability of Technical Support Document; Notice of Intent to Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Preliminary Determination to Cancel.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticides containing inorganic arsenicals. This Notice announces EPA's preliminary determination to cancel, pursuant to section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the registration of products containing arsenic acid as a desiccant on cotton. This proposal is based on unreasonable cancer risks posed to workers who are exposed to arsenic, which is classified as a known human (Group A) carcinogen, through handling arsenic acid and arsenic-treated cotton plant parts. EPA has concluded that there are no practical protective measures to adequately mitigate exposures. In addition, this Notice announces the availability of the Inorganic Arsenicals Technical Support Document and the draft Notice of Intent to Cancel. The Technical Support Document and accompanying scientific reviews constitute the technical documents in support of this action. In addition to proposing cancellation of arsenic acid use on cotton, this Notice also proposes to conclude the Special Review of all other non-wood preservative pesticide products containing inorganic arsenicals: arsenic acid for use on okra for seed, sodium arsenite, lead arsenate and calcium arsenate. The registrations of the above-mentioned pesticides containing the inorganic arsenical compounds have been canceled voluntarily by the respective registrants since 1988. All other non-wood preservative pesticidal products containing inorganic arsenicals were canceled in 1988. The wood preservative uses were retained with strict risk reduction measures in action occurring in 1984.

DATES: Written comments and other relevant information on the preliminary determination, including the existing stocks provision, should be received by EPA on or before December 6, 1991.

ADDRESSES: Submit three copies of written comments, bearing the document control number "OPP-30000/29B" by mail to Information Services Section, Program Management and Support Division (H7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI). Information so marked will not be disclosed to the public except in accordance with the procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked CBI may be disclosed to the public by the EPA without prior notice to the submitter. The inorganic arsenicals public docket, which contains all the non-CBI written comments and the corresponding index, in addition to supporting information cited in this Notice, will be available for public inspection and photocopying in Room 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Lisa Engstrom, Special Review Branch (H7508W), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 2N6, Westfield Building, 2800 Jefferson Davis Highway, Arlington VA (703) 308–8031.

Copies of the Inorganic Arsenicals Technical Support Document and Draft Notice of Intent to Cancel are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice is organized into eight Units. Unit I is the introduction and provides information on the regulatory background of the inorganic arsenicals, information related to the inorganic arsenicals and information on the legal background for this action. Unit II summarizes the risk assessment, the benefits assessment and the risk/benefit analysis. Unit III provides conclusions and the proposed regulatory actions. Unit IV discusses existing stocks of arsenic acid. Procedures related to the referral to the U.S. Department of Agriculture and the Scientific Advisory Panel are described in Unit V. Unit VI provides a list of references. This Notice concludes with Units VII and VIII, summarizing the opportunity for public comment and the availability of the public docket, respectively.

A. Regulatory History of Inorganic Arsenicals

This Notice focuses on arsenic acid, the last remaining inorganic arsenical registered for non-wood preservative use. Arsenic acid is used as a desiccant on cotton in areas of Texas and Oklahoma. Use in these states is divided into two areas based on usage patterns: the Coastal Bend and Blacklands, and the High and Rolling Plains. EPA issued a Notice of Rebuttable Presumption Against Registration (hereafter referred to as Special Review) for the wood preservative and non-wood preservative uses of inorganic arsenicals in the **Federal Register** of October 18, 1978 (43 FR 48267). That Notice was based on a determination that use of the inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity and mutagenicity under 40 CFR 162.11 (these criteria are now found at 40 CFR 154.7).

For the wood preservative uses of inorganic arsenicals, EPA issued a Preliminary Determination (PD 2/3) on February 19, 1981 (46 FR 13020) which proposed changes to the terms and conditions of registration. That proposal was based on a detailed assessment of the risks and benefits of continued registration of the wood preservative use of inorganic arsenicals. The Final Determination, which required certain modifications to the terms of the conditions of registration, was published in the **Federal Register** of July 13, 1984 (49 FR 28666). EPA received requests for hearings from registrants contesting the requirements of that Notice. After considering alternative mechanisms suggested by registrants for accomplishing the goals of the July 13, 1984 Notice, EPA issued an amended Notice of Intent to Cancel, which was published in the **Federal Register** of January 10, 1986 (51 FR 1334). That Notice resolved issues relating to the wood preservative uses of the inorganic arsenicals with minor modifications to the requirements of the July 13, 1984 Notice. All registrants have either modified their registrations in accordance with the requirements of the Amended Notice or the registrations were canceled pursuant to section 6 of FIFRA.

For the non-wood preservative uses of inorganic arsenicals, EPA issued a Preliminary Determination in the **Federal Register** of January 2, 1987 (52 FR 132). EPA proposed to cancel the registrations of virtually all of the non-wood preservative uses of inorganic arsenicals based on acute toxicity, which was added as a risk concern subsequent to the initiation of the Special Review, to the general public because of a large number of accidental exposures, and carcinogenicity risk to workers handling pesticides containing inorganic arsenicals. Consideration of four inorganic arsenicals - arsenic acid on cotton and okra, sodium arsenite on grapes, calcium arsenate on turf, and lead arsenate on citrus - was deferred since these uses did not pose acute risks and since potential risk related to dermal and dietary exposure was to be reviewed further. EPA's Final Determination to Cancel products containing inorganic arsenicals for all but the deferred uses was published in the **Federal Register** on June 30, 1988 (53 FR 24787). After reviewing the comments and data submitted, only two registrations were proposed for retention: the insecticidal use of arsenic trioxide in a sealed metal container and the solid formulation of arsenic trioxide used to control moles and gophers. EPA noted that these two formulations were packaged in a manner that reduced chances of exposure such that the benefits of continued use outweighed risks. Hearings were requested by several registrants regarding uses to be canceled by the action. An Administrative Law Judge determined that the registrations should be canceled and in July 1989, that determination was upheld by the Administrator on appeal.

The registrants of lead arsenate for use as a growth regulator on citrus requested voluntary cancellation in 1987. The tolerances for lead arsenate were revoked on April 3, 1991 (56 FR 13593).

The registrations of calcium arsenate on turf were voluntarily canceled in 1989. The registrants of these products were allowed to sell existing stocks until February 1991. All others may distribute and sell calcium arsenate stocks until December 1991.

The registrant of the two remaining products containing sodium arsenite, which was used as a fungicide on grapes, requested voluntary cancellation November 13, 1990. A Notice announcing the receipt of the request was published June 19, 1991 (56 FR 28154). That Notice provided a 90–day comment period for either withdrawal of the voluntary cancellation request or transfer of the registration to another party.

The registrant of the 24(c) registration of arsenic acid as a desiccant on okra requested voluntary cancellation of the registration from the state in 1989. The state allowed use of existing stocks until November 1990.

Other statutes also provide to the EPA the authority to regulate inorganic arsenic. Inorganic arsenic was listed as a hazardous air pollutant under section 112 of the Clean Air Act (as amended in 1977) and, as a consequence of that listing, the emissions from the cotton gin source category were a candidate for regulation. The intent of the regulation would be to protect only the public living near the cotton gin handling the arsenic-desiccated cotton; however, the EPA announced that emissions would not be regulated. In 1986, however, the EPA announced that it would not regulate this source category under the policies in place at that time (51 FR 27956). Presently, EPA is reviewing this decision under the Clean Air Act Amendments of 1990. (Cancellation of the arsenic acid as a cotton plant desiccant would, however, eliminate the source of the arsenic in the emissions and further regulation under the Clean Air Act would not be required.) OSHA has established a permissible exposure limit of 10 μ/m^3 for arsenic, however exposures resulting from the pesticidal use of inorganic arsenic, including cotton gins, are exempt from this standard. In setting this standard, OSHA concluded that the level set was the lowest feasible level; however, a significant risk remained to employees at that level (48 FR 1864). Thus, only the

use of arsenic acid on cotton is subject to a risk-benefit analysis in this notice.

B. Legal Basis

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). FIFRA covers not only pesticides, but also plant growth regulators, defoliants and desiccants (FIFRA section 2(a)). Before a product can be registered as a pesticide, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), without causing "any unreasonable risk to man and the environment taking into account the economic, social and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is at all times on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide does not meet this standard for registration or continued registration, the Administrator (of EPA) may deny or cancel this registration under section 3 or 6 of FIFRA.

C. The Special Review Process

Special Review, previously known as Rebuttable Presumption Against Registration (RPAR), is a process by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any or all uses of the pesticide cause unreasonable adverse effects to man or the environment. The Special Review process is currently governed by 40 CFR Part 154.

A Special Review may be initiated if a pesticide meets or exceeds the risk criteria set forth in the regulations found at 40 CFR 154.7. EPA announces that a Special Review is initiated by publishing a Notice of Initiation (supported by Position Document 1) in the **Federal Register**. Registrants and other interested persons are invited to review and comment on the data on which the decision to initiate a Special Review is based. After reviewing public comments and available data, EPA generally prepares a risk/benefit assessment for the registered pesticide uses considered in the PD 1.

In determining whether the continued use of a pesticide poses risks which are greater than the benefits, EPA considers possible changes to the terms and conditions of registration which can reduce risks. If EPA determines that such changes reduce risks to the level where benefits outweigh the risks, it may require that such changes be made in the terms and conditions of registration. Alternatively, EPA may determine that no changes in the terms and conditions of the registration will adequately ensure against unreasonable adverse effects from one or more of the uses of the pesticide. If EPA makes such a determination, it may seek cancellation and, if necessary, suspension.

Once the risk/benefit analysis has been completed, EPA generally publishes the Preliminary Determination (supported by Position Document 2/3 (PD 2/3)) in the **Federal Register**. That document presents a detailed discussion of the risk and benefit assessments, and sets forth the regulatory action EPA proposes to take.

The public is invited to rebut EPA's proposed action by submitting data and information regarding assumptions used or deficiencies cited in this Notice in the risk and benefit assessments, or by showing that use of the pesticide is not likely to result in any significant risk to humans or the environment. In addition to submitting evidence to rebut the risk presumption, commenters may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide outweigh the risks of its use. Comments on the risks and benefits of the distribution, sale and use of existing stocks, as discussed in Unit IV of this Notice will also be considered. The draft Notice of Intent to Cancel (NOIC) is sent to the U.S. Department of Agriculture (USDA) and EPA's Scientific Advisory Panel (SAP) for review and comment. After reviewing the comments of the SAP, USDA and other interested persons, EPA reaches its final regulatory determination and concludes the Special Review by publication of a Final Determination (supported by Position Document 4(PD 4)) in the **Federal Register**.

Adversely affected persons may request a hearing on the cancellation, modification, or denial of an application for a specified registration and use. The registration generally remains in effect pending the Administrator's final decision on the administrative hearing.

II. Summary of Risk/Benefit Assessment

A. Risk Determination

An extensive amount of information, including several EPA-generated reports, is available describing adverse effects associated with exposure to inorganic arsenicals. The risk assessment contained in this Notice refers to several of these reports and studies. The Inorganic Arsenicals Technical Support Document, which summarizes key studies used, may be obtained from the contact person listed above, or from the inorganic arsenicals public docket also noted above.

EPA relies on human epidemiology studies when assessing the risks associated with exposure to inorganic arsenicals. It should be noted that inorganic arsenical pesticides are of two valence states: pentavalent and trivalent, the latter being more toxic (arsenic acid is pentavalent). Evidence of interconversion between the two states in humans and animal models leads EPA to believe that studies which address either form are relevant in supporting the determination of carcinogenicity.

1. *Carcinogenicity*—a. *Hazard identification.* EPA has determined that the risk criterion for carcinogenicity as set forth in 40 CFR 154.7(a)(2) has been exceeded. Based on the studies described below, EPA's Carcinogen Assessment Group (CAG) has classified inorganic arsenic as a Group A carcinogen (carcinogenic to humans). The classification scheme can be found in the **Federal Register** of September 24, 1986 (51 FR 33992). These studies have also been used in developing quantitative risk assessments in previous regulatory actions concerning inorganic arsenicals. For a more detailed discussion of these studies, refer to the 1984 Health Assessment Document for Inorganic Arsenic (OHEA Document), (Ref. 13) which is contained in the inorganic arsenicals public docket at the address listed above.

Enterline and Marsh (1980, 1982) observed a significant increase in mortality from lung cancer in workers exposed to inorganic arsenic at a Tacoma, Washington copper smelter. Lee and Feldstein (1983) found a correlation between respiratory cancer mortality and length of employment for workers at an Anaconda, Montana copper smelting plant that had been previously examined by Lee and Fraumeni (1969). Higgins et al. (1982), who focused primarily upon the most heavily exposed workers at this Anaconda smelter, concluded that inhalation exposure to arsenic was strongly related to respiratory cancer mortality in these workers. Exposure to possible confounding factors, such as smoking, asbestos and sulfur dioxide, did not appear to account for the excess respiratory cancer observed in the study. Smoking was thought to be responsible for a small fraction of the mortality, but significantly increased

mortality was observed among non-smokers as well.

Brown and Chu (1983) applied the "multi-stage" model of carcinogenesis to the Anaconda smelter studies, taking into account exposure rate, durations of exposure, age of initial exposure, and time since cessation of exposure. Their analysis of the data concluded that inorganic arsenic acts as a late-stage carcinogen since the excess cancer mortality risk was greater among persons first exposed to inorganic arsenic later in life.

b. *Dose-response for assessing inhalation risks.* The inhalation carcinogenic risk of arsenic is based on the epidemiological studies by Higgins et al. (1982), Lee-Feldstein (1983), and Enterline and Marsh (1982), and the series of analyses for National Cancer Institute by Brown and Chu (1983).

In 1984, EPA's Office of Health and Environmental Assessment issued the "Health Assessment Document for Inorganic Arsenic" (the "OHEA Document"). In that document, EPA estimated a unit risk estimate to describe potential risk. The unit risk estimate for an air pollutant is defined as the lifetime cancer risk occurring in a population in which all individuals are exposed throughout their lifetimes to an average concentration of 1 μ/m^3 of the agent in the air they breathe. It is assumed, unless evidence exists to the contrary, that if a carcinogenic response occurs at the dose levels used in a study, then responses at all lower doses will occur with an incidence that can be determined by an appropriate extrapolation model. The unit risk (the cancer risk due to a lifetime exposure of 1 $\mu g/m^3$ arsenic in air) for inhaled arsenic has been estimated to be $4.29 \times 10^{-3} (\mu g/m^3)^{-1}$.

To convert the unit risk, which describes lifetime exposure to a single concentration of 1 $\mu g/m^3$, to a cancer potency factor which could describe cancer risk at various concentrations of inhaled arsenic acid, the following assumptions were made: 20 m^3/day tidal volume of air, a 100% absorption rate (assumed due to lack of data), for a 70 kg person. The following equation is used to obtain a cancer potency factor:

$$4.29 \times 10^{-3} (\mu g/m^3)^{-1} / (20\ m^3/day \times 0.001\ mg/\mu g) \times 70kg = 15\ (mg/kg/day)^{-1}$$

This cancer potency estimate was also used in the inorganic arsenicals wood preservative decisions. More detail on derivation of the cancer potency factor is given in the Inorganic Arsenicals Technical Support Document.

OHEA (Ref. 13) states that the linear non-threshold model used to estimate arsenic inhalation risk was adopted as the primary basis for risk extrapolation at low levels of exposure because, although the scientific basis is limited, it is the best of any of the current mathematical extrapolation models. However, OHEA (Ref. 13, pp. 7–90) also states that the imprecision of presently available technology for estimating cancer risks to humans at low levels of arsenic exposure should be recognized. The linear extrapolation model used here provides a rough but plausible estimate of the upper limit of risk: that is, with this model it is not likely that the true risk would be much more than the estimated risk, but it could be lower.

Therefore, the potential inhalation risk estimates presented throughout this PD 2/3 should be viewed as upper-limit estimates, not necessarily as accurate representations of true cancer risks.

Although concerned primarily with inhalation exposures, EPA recognizes other routes of potential exposure: contaminated water, cottonseed from treated cotton, and dermal exposure. The Agency has concluded (U.S. EPA, 1984) that the best data available for making quantitative cancer risk estimates for dermal and oral exposure to arsenic are the data collected by Tseng et al. (1968). These studies document the prevalence of skin cancer in people living in a section of Taiwan with a high concentration of arsenic in their well water. A cancer potency value of $1.65\ (mg/kg/day)^{-1}$ has been established by the Agency for oral routes of exposure.

2. *Exposure analysis.* Since the 1987 Preliminary Determination and 1988 Final Rule on the other non-wood preservative inorganic arsenicals, EPA has reassessed the exposure data for arsenic acid. The 1987 Preliminary Determination stated that EPA had estimated inhalation risk from exposure to arsenic acid, but did not believe the estimates would serve as a basis for cancellation. These estimates, however, did not take into account different usage patterns which greatly influence exposure and associated risk. A detailed discussion of assumptions used can be found in the Inorganic Arsenicals Technical Support Document.

a. *Workers handling arsenic acid.* EPA's refined assessment separately estimated commercial and private applicators' exposures, since commercial operations apply more desiccant. In addition, the occupational exposures for cotton workers have been divided into two geographic areas in Texas and Oklahoma: the Blacklands and Coastal Bend, and the High and Rolling Plains. Different usage patterns in the two regions result in different exposure and benefits. The Blacklands and Coastal Bend have conditions that have more moisture than the High and Rolling Plains so that nearly all of the cotton crop requires treatment. In the High and Rolling Plains, the farms are larger; however, the drier conditions lessen the amount of arsenic acid needed to facilitate desiccation and harvest.

The exposure estimates have been derived from a large number of studies from HED's surrogate data base, other EPA offices, and from the registrant (Ref. 2). Estimates for dermal and inhalation exposure are presented separately.

The assumptions used in exposure estimations are:

(1) Normal work clothing (gloves for mixer/loader only, long pants, long-sleeved shirt).

(2) When estimating dermal exposure, dermal absorption at 0.1 percent, as was used in the Arsenic Acid Wood Preservatives PD 4.

(3) When estimating inhalation exposure, 100% inhalation absorption (no mask or respirator due to the heat).

(4) An average body weight of 70 kg.

(5) Exposure over 35 working years of a 70 year lifetime.

The following Table 1 presents inhalation exposure for workers in the two geographical regions in Texas and Oklahoma--the Blacklands and Coastal Bend, and the High and Rolling Plains. Exposure is given in milligrams per year.

TABLE 1.— ESTIMATES FOR WORKER INHALATION EXPOSURE IN MG/YEAR

[Bracketed numbers indicate the number of days per year each task performed]

	Coastal Bend/Blacklands	High & Rolling Plains
Ground application		
Grower	[5 days/yr]	[10 days/yr]
Mixer/Loader (M/L)[1]	0.18	0.35

TABLE 1.— ESTIMATES FOR WORKER INHALATION EXPOSURE IN MG/YEAR—Continued

[Bracketed numbers indicate the number of days per year each task performed]

	Coastal Bend/Blacklands	High & Rolling Plains
Applicator	7.3	15
M/L and Applicator[1]	7.5	15
Commercial	[36 days/yr]	[20 days/yr]
M/L[1]	5	2.8
Applicator	62	34
Aerial	[6 days/yr]	[25 days/yr]
M/L[1]	1.8	7.5
Applicator	0.7	2.7
Other:[2]		
Cotton harvest (stripping)		
Closed cab	[100 days/yr] 0.2	[100 days/yr] 0.2
Open tractor	[15 days/yr] 0.3	[15 days/yr] 0.3
Ginning	[100 days/yr] 8.1	[100 days/yr] 8.1
Cotton trash disposal	[100 days/yr] 5.8	[100 days/yr] 5.8

[1] The values estimated for M/L and M/L/Applicator are based onavailable data which do not specify which type of loading system (open versus closed) was used.
[2] These practices are estimated to be the same for both regions.

The following Table 2 presents dermal exposure for workers in the two geographical regions in Texas and Oklahoma--the Blacklands and Coastal Bend, and the High and Rolling Plains. Exposure is given in milligrams per year.

TABLE 2.— ESTIMATES FOR WORKER DERMAL EXPOSURE IN MG/YEAR

[Bracketed numbers indicate the number of days per year each task performed]

	Coastal Bend/Blacklands	High & Rolling Plains
Ground application		
Grower	[5 days/yr]	[10 days/yr]
Mixer/Loader[1]	920 - open; 15 - closed	1840 - open; 30 - closed
Applicator	400	800
M/L/A[1]	1300 - open; 420 - closed	2700 - open; 830 - closed
Commercial	[36 days/yr]	[20 days/yr]
M/L[1]	27000 - open; 450 - closed	15000 - open; 250 - closed
Applicator	3500	1900
Aerial	[6 days/yr]	[25 days/yr]
M/L[1]	8800 - open; 146 - closed	37000 - open; 610 - closed
Applicator	22	92
Other[2]		
Cotton harvest (stripping)		
Closed cab	[100 days/yr] (unknown)	[100 days/yr] (unknown)
Open tractor	[15 days/yr] (unknown)	[15 days/yr] (unknown)
Ginning	[100 days/yr] (unknown)	[100 days/yr] (unknown)
Cotton trash disposal	[100 days/yr] (unknown)	[100 days/yr] (unknown)

[1] The values estimated for M/L and M/L/Applicator are based onavailable data which do not specify which type of loading system (open versus closed) was used.
[2] These practices are estimated to be the same forboth regions.

b. *Area residents' exposure.* Residents living in the vicinity of cotton gins in Texas and Oklahoma are potentially exposed to arsenic acid released into the air during the ginning process. For estimating resident exposure to arsenic acid from cotton gins, EPA's Office of Air Quality and Planning Standards (OAQPS) used human exposure computer modeling (Ref. 15). In addition OAQPS conducted an ambient monitoring study around two cotton gins in south-central Texas.

An estimated 320 cotton gins were believed to be processors of arsenic-desiccated cotton. Due to the large number of gins, the EPA determined that it was impractical to obtain the location data necessary for public exposure and risk assessments. In addition, the arsenic emissions were unknown for each gin. Therefore, a number of model plants were located in typical areas so that a possible range of risks could be ascertained.

In addition to the model plant exposure analysis, two gins were

monitored over a 1-year period to provide more concrete estimates of exposure (and risk) levels. Based on projections from the monitoring study, EPA estimated that exposure levels could be as high as 0.1 $\mu g/m^3$. This exposure level corresponds to a lifetime risk of approximately 5×10^{-4}.

c. *Dietary exposure.* Dietary exposure to inorganic arsenic is related to application of arsenic acid to cotton. EPA has revoked, or is in the process of revoking, tolerances for all other inorganic arsenicals. Organic arsenic is found naturally in foods, mainly shellfish and meats. These complex forms of arsenic appear to be resistant to metabolism in humans and are rapidly excreted intact. These forms are regarded as being toxicologically inert.

A chronic dietary exposure analysis was conducted to estimate the anticipated residue contribution (ARC) for the overall U.S. population and 22 population subgroups. The ARC takes into account arsenic acid residue information and the amount of the treated commodity consumed (by the population and the 22 subgroups). The dietary exposure analysis considers exposure to cottonseed products, since this is the only commodity affected by application of a registered inorganic arsenical pesticide.

A tolerance has been established for residues of arsenic trioxide in cottonseed at 4 ppm (40 CFR 180.180). Processing studies indicate that total arsenic residues do not concentrate from processing cottonseed.

3. *Groundwater contamination.* Although groundwater concerns were not a basis for initiating the Special Review, EPA has identified a concern for the risk of ground water contamination. Based on data in a report from the Texas Department of Agriculture, "Testing for Pesticide Residues in Well Water" (1989), the potential for contamination of groundwater from arsenic application, cotton gin trash disposal and the use of gin trash as a soil conditioner exists, especially if the source concentrates arsenic. Arsenic levels in soil vary from less than 1 ppm to over 40 ppm. The latter value may reflect agricultural practices as well as naturally occurring levels.

4. *Risk calculation*— a. *Workers.* Estimated lifetime cancer risks for various types of workers are summarized in Tables 3 and 4. EPA has particular concern for applicators and mixer/loaders with estimated risks of 2×10^{-2} resulting from inhalation exposure. The contribution of dermal exposure to total exposure is relatively small due mainly to the low dermal absorption. Inhalation and dermal risks from exposure to arsenic have not been combined, in part since the cancer potency estimates for dermal exposure and inhalation are different.

The following Table 3 describes risk estimates for workers due to inhalation exposure to arsenic acid used as a cotton desiccant.

TABLE 3.— ESTIMATED LIFETIME RISKS FROM INHALATION EXPOSURE TO ARSENIC ACID AS A COTTON DESICCANT

	Risk (No Respirator Assumed)[2]	
	Coastal Bend/ Blacklands	High and Rolling Plains
Ground application		
Grower		
M/L[1]	5×10^{-5}	1×10^{-4}
Applicator	2×10^{-3}	4×10^{-3}
M/L/A[1]	2×10^{-3}	4×10^{-3}
Commercial:		
M/L[1]	1×10^{-3}	8×10^{-4}
Applicator	2×10^{-2}	1×10^{-2}
Aerial:		
M/L[1]	5×10^{-4}	2×10^{-3}
Applicator	2×10^{-4}	8×10^{-4}
Other:[3]		
Cotton harvest (stripping):		
Closed Cab	6×10^{-5}	6×10^{-5}
Open Tractor	9×10^{-5}	9×10^{-5}
Ginning	2×10^{-3}	2×10^{-3}
Cotton Trash Disposal	2×10^{-3}	2×10^{-3}

[1]The values estimated for M/L and M/L/Applicator are based on available data which do not specify which type of loading system (open versus closed) was used.

[2] Risk Calculation assumes a 100% inhalation absorption value and Cancer Potency factor of 15 $(mg/kg/d)^{-1}$ for Inhalation Exposure (Rispin, 2/17/88, "Oncogenic Risk Assessment for Inorganic Arsenic).

[3]These practices are estimated to be the same for both regions.

The following Table 4 describes risk estimates for workers due to dermal exposure to arsenic acid used as a cotton desiccant.

TABLE 4.—ESTIMATED LIFETIME RISKS FROM DERMAL EXPOSURE TO ARSENIC ACID AS A COTTON DESICCANT

	Typical Work Clothing Assumed		With Protective Clothing[2]	
	Coastal Bend/ Blacklands	High & Rolling Plains	Coastal Bend/ Blacklands	High and Rolling Plains
Ground application:				
Grower				
M/L open[1]	3×10^{-5}	6×10^{-5}	1×10^{-5}	3×10^{-5}
M/L closed[1]	5×10^{-7}	1×10^{-6}	3×10^{-7}	6×10^{-7}
Applicator	1×10^{-5}	3×10^{-5}	2×10^{-6}	4×10^{-6}

TABLE 4.—ESTIMATED LIFETIME RISKS FROM DERMAL EXPOSURE TO ARSENIC ACID AS A COTTON DESICCANT—Continued

	Typical Work Clothing Assumed		With Protective Clothing[2]	
	Coastal Bend/ Blacklands	High & Rolling Plains	Coastal Bend/ Blacklands	High and Rolling Plains
M/L/A open	4×10^{-5}	9×10^{-5}	2×10^{-5}	3×10^{-5}
M/L/A closed	1×10^{-5}	3×10^{-5}	2×10^{-6}	5×10^{-6}
Commercial				
M/L open	9×10^{-4}	5×10^{-3}	4×10^{-4}	2×10^{-4}
M/L closed	1×10^{-5}	8×10^{-6}	8×10^{-6}	5×10^{-6}
Applicator	1×10^{-4}	6×10^{-5}	2×10^{-5}	1×10^{-5}
Aerial				
M/L open	3×10^{-4}	1×10^{-3}	1×10^{-4}	6×10^{-4}
M/L closed	5×10^{-6}	6×10^{-5}	3×10^{-6}	4×10^{-5}
Applicator	7×10^{-7}	3×10^{-6}		
Other[3]				
Stripping				
Closed cab	unknown	unknown	unknown	unknown
Open tractor	unknown	unknown	unknown	unknown
Ginning	unknown	unknown	unknown	unknown
Cotton trash disposal	unknown	unknown	unknown	unknown

[1] The label does not require closed loading systems. Based on cancer potency estimate of 1.65 $(mg/kg/day)^{-1}$ and dermal absorption of 0.1% (See Wood Preservatives PD 4).
[2] Assuming protective gloves reduce exposure 90% and elimination of exposure of torso and limbs.
[3] These practices are estimated to be the same for both regions)

b. *Area residents.* The risk assessment for area residents presented here was published by EPA's Office of Air Quality Planning and Standards (OAQPS) in Research Triangle Park. This assessment, "Inorganic Arsenic Risk Assessment for Primary and Secondary Lead Smelters, Primary Zinc Smelters, Zinc Oxide Plants, Cotton Gins and Arsenic Chemical Plants" was issued in 1985.

A total of 320 cotton gins were identified as processors of arsenic-desiccated cotton in the report. Due to the large number of gins, EPA determined that it was impractical to obtain the location data necessary for an arsenic risk assessment based on every gin. For estimating residential exposure to arsenic acid from cotton gins, OAQPS used their Human Exposure Model (HEM).

In addition to using the HEM, two operating gins were monitored over a 1-year period to estimate exposure. Monitors were arranged in a fan-like array of sites positioned at distances of 100, 200 and 400 meters downwind of the gins. Upwind sites were placed at 400 meters (one gin only) and 100 meters. Sampling was conducted at 4 hour intervals for a 15-day period during the short ginning season followed by 6-day interval sampling for the remainder of the year. A discussion of the monitoring and risk assessment is included in the Technical Support Document and in the OAQPS report.

In their conclusion, OAQPS found that the modeled values and those monitored were reasonably close. While the monitoring study found that arsenic concentrations fell off rapidly with distance from the gins, the lifetime risks for residents exposed to the maximum ambient concentrations were estimated to be 5×10^{-4}.

c. *Dietary.* The oral cancer potency estimate of 1.65 $(mg/kg/day)^{-1}$ was used to calculate dietary risk. By multiplying cancer potency estimate times the exposure, a dietary risk estimate from treated cottonseed of 1.8×10^{-8} was calculated for the general population (Ref. 5).

EPA recognizes that arsenic-contaminated water is a potential source of arsenic exposure, but lacks sufficient U.S.-based data to conduct a full risk assessment for this route of exposure. Overall, EPA believes dietary risk is negligible, especially when compared to inhalation risks.

B. Benefits

Arsenic acid is used in parts of Texas and Oklahoma to desiccate cotton in preparation for harvesting with a cotton stripper, a cotton harvesting method unique to this region. In these states, much of the cotton is bred to have short stems and only partly opened bolls at maturity to resist wind damage. In the stripper process, the stalk passes between rotating fingers which strip off the bolls and branches from the stem. This type of cotton offers lower yields per acre than those found in the Mississippi Delta or irrigated areas of New Mexico, Arizona and California, and prevents the use of picker machines, which depend on wide open bolls from which the cotton is plucked after the leaves are removed by a defoliant.

The current usage of arsenic acid is estimated at about 2 to 3 million pounds a.i. per year on about 500,000 acres of cotton. Usage is expected to continue at this level for the next few years. This acreage represents about 11% of the Texas/Oklahoma crop, which in turn represents 5 to 10% of the total US acreage.

The general approach of this analysis was to evaluate the impact of canceling the use of arsenic acid. When cotton desiccation is possible through an alternative method or chemical, the impact of shifting to the alternative was the basis of benefit estimates. Economic impacts on users, consumers, commodity markets, and other affected parties were considered for this analysis. These estimates are based on changes in production cost (which includes any higher priced chemical desiccant), changes in yield and/or quality, changes in land use, and changes in the affected commodity markets resulting from the loss of arsenic acid.

If the arsenic acid registration were to be canceled, users would probably shift to paraquat or wait for frost to desiccate their cotton. The efficacy of paraquat is affected by moisture; if conditions are too moist, the chemical may not completely kill the plant, thus permitting foliar regrowth between treatment and harvest. In the Texas and Oklahoma High and Rolling Plains, growers frequently rely on frost to desiccate cotton. Along the Texas coast and in the

Blacklands, the lateness or infrequency of frosts cannot be relied upon for natural desiccation. Instead, chemical desiccants are employed—usually arsenic acid.

If growers were to shift to wheat or sorghum, the most common alternative crops, they would lose eligibility for subsidies on both crops for 3 years. EPA estimates that these subsidies would total $67 to 80 million ($121- to 144/acre). Because shifting to alternative crops loses price support eligibility for both cotton and the alternative crop for 3 years, it is expected that most growers will continue to grow cotton even at reduced profit. EPA concludes that these affected growers could lose in aggregate as much as $19 to 22 million per year. The estimates for losses are based on a 1980 report entitled, "The Biological and Economic Assessment of Pentachlorophenol, Inorganic Arsenicals in Creosote, Volume II." This report was based on data and assumptions collected from the 1977 growing season. No data has been submitted since then, so that the current assessment has been derived by adjusting for factors such as inflation and on expert opinion.

If arsenic acid were not available, growers would most likely use the alternative chemical desiccant, paraquat, which is more expensive. As noted in the documents, paraquat is not as reliable as arsenic acid in moist environments. For these environments, the effects of moisture on the harvested cotton (degradation of fibers, staining, mold) will effect the quality and therefore price paid for their cotton.

The impact of canceling arsenic acid on the prices of cotton and cotton products would be negligible because the affected acres produce only about 5- to 6 percent of the domestic supply of cotton.

EPA's data are insufficient to estimate the number of workers and area residents who would be affected by the proposed cancellation of arsenic acid on cotton at this time. EPA is aware that there are 64 gins in Oklahoma and 506 gins in Texas. More information is needed to define the location of these gins, and how much arsenic-treated cotton these gins process. Data submitted to address affected populations should include a representative sample from the growing regions in Texas and Oklahoma. Related air sampling data to define the radius of concern around gins and fields should be conducted over time (to obtain the duration of elevated arsenic air levels).

III. Regulatory Options

EPA has concluded that the risks of arsenic acid use, as currently registered, outweigh the benefits. The purpose of evaluating regulatory options is to consider modifications in the terms and conditions of use that may result in benefits outweighing risks. The options that EPA considered are outlined below.

A. Exposure Mitigation

The practicality of protective clothing for applicators is in question, since application can take up to 12 hours and the hot weather may render the requirements infeasible. (Label directions recommend that application be made when conditions are hot.) Climate and cost render other measures, such as engineering controls, impractical as well. The following Table 5 describes measures considered by EPA and the potential impact and degree of exposure reduction afforded by each measure.

TABLE 5.—POTENTIAL MITIGATION MEASURES

Mitigation Measure	Potential Exposure Mitigation
Closed loading	Not enough information to estimate reduction in inhalation. For mixer/loaders, loading approximately 60-fold reduction in dermal exposure. Potential risk reduction for dermal exposure for mixers given in Table 2. Since dermal risk is small especially when compared to inhalation risk, reduction is not expected to have a significant impact on overall risk.
Closed cabs for applicators	An approximate 3- to 10-fold reduction; considered too small a reduction to have significant impact on overall risk. Closed systems represent additional equipment costs.
Container design	Data base small, although thought to reduce dermal exposure from splashing while pouring and liquid dripping from container. Would only affect mixer/loader exposure.
Respirators	Respirators believed impractical due to non-wearing, difficulty in fitting and not having a respiratory protection program on site. Potential risk reduction given in Table 3. Hot climate may render infeasible.
Protective clothing	Gloves (90% protection) and complete protection to torso and limbs considered maximum achievable. Hot weather may render infeasible. Potential risk reduction given in Table 4.
Lower label rates	Not efficacious at lower rates. Difficult to enforce.

Note that if some of the measures were to be considered, data would most likely be needed to demonstrate the effectiveness of such measures in reducing exposures (Ref. 3).

EPA has concluded that these typical exposure mitigation measures, would not adequately protect workers. In addition, any exposure mitigation, such as respirators and closed cab application, that does not change current application practices would not affect area residents' exposure.

B. Deferring Regulation to the Affected States

Consideration was given to developing a risk communication effort in connection with the Texas and Oklahoma State Health Departments to inform workers and area residents of the potential hazard of arsenic exposure. On balance, these efforts are likely to be marginal because education would not reduce risks as there are no means to do so, and because of the economic sacrifice involved in reducing exposure, through engineering controls or through relocating. In addition, through a unique wording of the Texas Clean Air Act, agricultural sources (including gins) are exempt from almost all Texas Air Control Board (TACB) regulations. As a result, the TACB is limited in its ability to control emission of cotton dust (to which arsenic is adhered).

C. Public Hearings

Holding public hearings to allow the public to comment on EPA's proposal has also been discussed. This method, however, would duplicate efforts in obtaining public participation since the present system includes extensive solicitation of public comments.

IV. Conclusions and Proposed Regulatory Actions

A. Arsenic Acid

1. *Cotton desiccant* The Agency proposes to cancel the registration of products containing arsenic acid as a cotton desiccant. The Agency has concluded that worker risks, which are

not amenable to mitigation, are unacceptable. EPA recognizes there are benefits associated with arsenic acid use, and that alternatives are not as efficacious. However, risks higher than 10^{-2} are considered unreasonable within the meaning of FIFRA section 2 (bb), and are not balanced by the moderate benefits which are accrued almost entirely by local growers. Finally, EPA considers ground water contamination a potential source of exposure.

2. *Okra seed desiccant.* The Agency proposes to conclude the Special Review of arsenic acid as a desiccant on okra grown for seed. The registrant has recently requested voluntary cancellation of the 24(c) registration from EPA. The registrant requested voluntary cancellation of the 24(c) state registration from Arizona in 1989; however, the registrant deferred requesting voluntary cancellation of the 24(c) registration from EPA pending resolution of data requirements with Arizona. (According to FIFRA, voluntary cancellation requests for 24(c) registrations must be addressed to the state where the 24(c) was issued and to EPA.) When the registrant requested voluntary cancellation of the 24(c) registration in 1989, Arizona granted one year's use of existing stocks; this provision expired November 15, 1990. EPA will therefore not provide for use of existing stocks of arsenic acid as a desiccant on okra in Arizona.

B. Sodium Arsenite as Fungicide on Grapes

The Agency proposes to conclude the Special Review of sodium arsenite used as a fungicide on grapes. A request to voluntarily cancel all registrations was received November 13, 1990. Although there is some use of sodium arsenite at this time due to use of limited existing stocks, these stocks are assumed to be minimal and do not warrant any further regulatory action.

C. Lead Arsenate as a Plant Growth Regulator

The Agency proposes to conclude the Special Review of the use of lead arsenate as a plant growth regulator on grapefruit because no lead arsenate products exist to require its continued Special Review. Lead arsenate growth regulator products have not been produced since 1986 and were voluntarily canceled as of September 1987. Less than 10,000 lbs. were available for the 1989 growing season; all stocks are expected to have been used.

D. Calcium Arsenate for Use as a Herbicide on Turf

The Agency proposes to conclude the Special Review of the use of calcium arsenate on turf because all products are canceled. An existing stocks provision expired February 28, 1990 for the last remaining registrant.

V. Existing Stocks

Related to this preliminary determination is consideration of arsenic acid stocks which remain after registrations have been canceled. On June 26, 1991, EPA published a statement of policy on existing stocks which summarizes the policies guiding EPA in making decisions regarding existing stocks of individual pesticide products whose registrations are suspended or canceled (56 FR 29362). Pursuant to FIFRA section 6(a)(1), "the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is canceled [pursuant to section 6 of FIFRA] to such extent, under such conditions, and for such uses as he may specify, if he determines that such sale or use is not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment." For purposes of this action, EPA defines the term "existing stocks" as any quantity of arsenic acid products subject to this Notice that:

(1) Is in the United States

(2) Was formulated, packaged and labelled for use on the date of publication in the **Federal Register** of this Notice.

(3) Is being held for shipment or release or was shipped and released into commerce prior to the date on which the registration of the product is canceled pursuant to this Notice.

For arsenic acid, EPA has considered whether continued distribution, sale, and use of existing stocks exceeds the benefits associated with the conditions of any existing stocks provision. A risk/benefits analysis for existing stocks purposes is somewhat different from the analysis that is performed by EPA in determining whether or not to cancel the registration(s) of a pesticide. In making existing stocks determinations, EPA may consider any or all of the following criteria, to the extent the information is available:

(a) The quantity of existing stocks at each level of the market, which includes but is not limited to users, distributors, and registrants.

(b) The risks resulting from use of such stocks during a period allowing distribution, sale or use of existing stocks.

(c) The benefits resulting from the use of such stocks. In considering the benefits of existing stocks, EPA may consider short-term disruption in agricultural practices resulting from switching to alternative methods of desiccating stripper-picked cotton.

(d) The dollar amount already spent on existing stocks.

(e) The risks and costs of disposal should further distribution, sale or use be prohibited. EPA will also assess whether the existing stocks can be used by other industries.

(f) The practicality in implementing an existing stocks provision.

(g) Any other relevant factors related to balancing the risks and benefits of existing stocks provisions or prohibition.

EPA has considered the above criteria related to sale of existing stocks of arsenic acid. EPA is proposing to prohibit sale, distribution and use of arsenic acid after the final date of cancellation. EPA has considered the risks associated with 1 year's use of 6×10^{-4} to certain workers exposed to arsenic acid, which has been classified as a known human carcinogen. EPA has also identified possible exposure to area residents and of ground water contamination. Benefits associated with sale, distribution and use would result from time allowed to develop and implement alternative methods of desiccation. Paraquat, although considered less effective in certain areas and more costly to use, is available as an alternative chemical desiccant. Accordingly, EPA has considered the benefits associated with allowing time to sell, distribute and use existing arsenic acid stocks to be limited and not justified when weighed against risks.

VI. Procedural Matters

As required by FIFRA section 6(b) and 25(d) and 40 CFR 154.31(b), EPA has transmitted copies of a draft Notice of Intent to Cancel consistent with this Notice, together with support documents, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. EPA will publish any comments received from the Secretary or from the Panel, and EPA's responses, in the Notice of Final Determination.

VII. References

(1) Rispin, February 17, 1988, "Oncogenic Risk Assessment for Inorganic Arsenic"

(2) Schlosser, June 15, 1989 "Assessment of Exposure of Inorganic Arsenic Pesticides to Handlers and Others Associated with the Use of

These Chemicals on Cotton, Okra, and Grapes".

(3) Schlosser, November 9, 1990, "Potential Mitigation Measures for Cotton Workers Exposed to Arsenic Acid."

(4) Texas Department of Agriculture, 1989, "Testing for Pesticide Residues in Texas Well Water."

(5) Tomerlin, November 3, 1989, EPA Memo, "Dietary Exposure Analysis for the Special Review of Inorganic Arsenicals."

(6) USEPA, October 18, 1978 (43 FR 48267) USEPA, February 19, 1981 (46 FR 13020).

(7) USEPA, July 13, 1984 (49 FR 28666).

(8) USEPA, January 10, 1986 (51 FR 1334).

(9) USEPA, January 2, 1987 (52 FR 132).

(10) USEPA, June 30, 1988 (53 FR 24787).

(11) USEPA. August 4, 1986, (51 FR 27956).

(12) USEPA, September 24, 1986 (51 FR 33992).

(13) USEPA, 1984, Health Assessment Document for Inorganic Arsenic.

(14) USEPA, July 1984, Arsenic Acid Wood Preservatives PD 4 (amended January 10, 1986, (51 FR 1334).

(15) USEPA, 1985, OAQPS "Risk Assessment for Cotton Gins." OSHA, January 14, 1986, (48 FR 1864).

VIII. Public Comment Opportunity

EPA is providing a 60-day period for the public to comment on this Notice and on the Inorganic Arsenicals Technical Support Document. Comments must be submitted by December 6, 1991. All comments and information should be submitted in triplicate to the address given in this Notice under the ADDRESSES section of this notice. The comments and information should bear the identifying notation OPP-30000/29B.

All comments, information and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

IX. Public Docket

EPA has established a public docket [OPP-30000/29B] for the inorganic arsenic Special Review. This public docket will include: (1) This Notice; (2) the Technical Support Document; (3) any other Notices pertinent to the inorganic arsenic Special Review; (4) non-CBI documents and copies of written comments or other materials submitted to EPA in response to this Notice, and any other comments regarding arsenic acid submitted at any time during the Special Review process by any person outside the government; (5) a transcript of all public meetings held by EPA for the purpose of gathering information on inorganic arsenicals; (6) memoranda describing each meeting on inorganic arsenic held during the Special Review process between EPA personnel and any person outside the government; and (7) a current index of materials in the public docket.

Dated: September 30, 1991

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-24072 Filed 10-4-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 30, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0110.

Title: Application for Renewal of License of Commercial and Noncommercial AM, FM or TV Broadcast Station.

Form Number: FCC Form 303-S.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Other: once every 5 years for TV; once every 7 years for radio.

Estimated Annual Burden: 3,237 response; 0.8 hours average burden per response; 2,590 hours total annual burden.

Needs and Uses: FCC Form 303-S is required to be filed by licensees of AM, FM and TV broadcast stations for renewal of the station license. This form is basically a checklist which assures the Commission that all necessary reports and contracts have been filed and that the licensee is in full compliance with FCC rules. On 8/1/91 the Commission adopted a Memorandum Opinion and Order in MM Docket No. 90-570, Policies and Rules Concerning Children's Television Programming. This MO&O responds to seven petitions for reconsideration and/or clarification. FCC Form 303-S will be amended to reflect that the commercial limits apply to program segments of five minutes or longer duration that are part of a larger block of children's programming. The data is used by FCC staff to assure that the necessary forms connected with the renewal application have been filed and that the licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-24000 Filed 10-4-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of review: Existing collection in use without an OMB control number.

Title: Dispute Resolution Neutrals Questionnaire.

Form number: None.

OMB number: None.

Expiration date of OMB clearance: N/A.

Respondents: Parties wishing to be considered for inclusion on the FDIC's Roster of Dispute Resolution Neutrals.

Frequency of response: On occasion.

Number of respondents: 500.

Number of responses per respondent: 1.

Total annual responses: 500.

Average number of hours per response: 0.5.

Total annual burden hours: 250.

OMB reviewer: Gary Waxman, (202) 395-7340, Office of Management and

Budget, Paperwork Reduction Project, Washington, D.C. 20503.

FDIC contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted before December 6, 1991.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(7)(B)(1)), the FDIC is developing a national roster of qualified dispute resolution neutrals to serve as mediators and arbitrators. Parties wishing to be considered for inclusion on this roster must submit a completed questionnaire to the FDIC.

Dated: October 1, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–24034 Filed 10–4–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

BW3 Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. BW3 Bancorporation, West Des Moines, Iowa; to merge with W.D.K. Bancorporation, West Des Moines, Iowa, and thereby indirectly acquire Liberty Bank & Trust, Palmer, Iowa.

2. Granville Bancshares, Inc., Granville, Illinois; to acquire 100 percent of the voting shares of The Whaples & Farmers State Bank, Naponset, Illinois.

3. Heritage Financial Services, Inc., Blue Island, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Country Club Bancorporation, Country Club Hills, Illinois, and thereby indirectly acquire 1st Heritage Bank, Country Club Hills, Illinois.

Board of Governors of the Federal Reserve System, October 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–24047 Filed 10–4–91; 8:45 am]

BILLING CODE 6210–01–F

Capital Directions, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capital Directions, Inc., Mason, Michigan; to engage *de novo* through its subsidiary, Monex Financial Services, Inc., d/b/a Monex Tax Service, Mason, Michigan, in tax planning and preparation activities pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be conducted in the Great Lakes region.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lowry Facilities, Inc., Clinton, Oklahoma, and Oklahoma Bancorportion, Inc., Clinton, Oklahoma; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–24048 Filed 10–4–91; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently

certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratory, 427 Fifth Avenue, NW., Attalla, AL 35954-0770 205-538-0012

Alpha Medical Laboratory, Inc. 405 Alderson Street, Schofield, WI 54476, 800-627-8200

American BioTest Laboratories, Inc. Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250 Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016

Bellin Hospital-Toxicology Laboratory, 2789 Allied Street, Green Bay, WI 54304, 414-496-2487

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810

Center for Human Toxicology, 417 Wakara Way-room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117

Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, suite 200, Columbia, SC 29206, 800-848-4245/803-782-2700

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-826/800-833-3984

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214-929-0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006

Drug Labs of Texas, 15201 I 10 East, suite 125, Channelview, TX 77530, 713-457-3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, suite 308, Pompano Beach, FL 33062, 305-946-4324

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-9800

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-225-9414 (outside MI)/800-328-4142 (MI only)

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672

Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 818-718-0115/800-331-8670 (outside CA)/800-464-7081 (CA only) (name changed: formerly Abused Drug Laboratories)

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961

Mayo Medical Laboratories, 200 SW. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515

MedTox Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614 312-880-6900

MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612-636-7466/800-832-3244

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414-257-7439

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800-752-1835/309-671-5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784 (name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/800-572-3734 (inside VA)/800-336-0391 (outside VA)

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627 (outside NC)/800-642-0894 (NC only)

National Psychopharmacology Laboratory, Inc., 9320 Park W.

Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680
Pathlab, Inc., 16 Concord, El Paso, TX 79906, 800–999–7284
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite 150, San Antonio, TX 78216, 512–493–3211
Regional Toxicology Services, 15305 NE. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061
Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM, 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, 2nd Floor, Maple Heights, OH 44137, 800–338–0166 outside OH/800–362–8913 inside OH
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

Charles R. Schuster,
Director, National Institute on Drug Abuse.
[FR Doc. 91–24152 Filed 10–4–91; 8:45 am]
BILLING CODE 4160–20–M

National Institute on Alcohol Abuse and Alcoholism; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the advisory committee of the National Institute on Alcohol Abuse and Alcoholism for November 1991.

The initial review group will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C–20, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4375).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.

Meeting Dates: November 7–8, 1991.

Place: Holiday Inn Crowne Plaza, Rockville, Maryland.

Open: November 7, 9 a.m.–10 a.m.

Closed: Otherwise.

Contact: Barbara Smothers, Ph.D., rm. 16C–26, Parklawn Bldg., Phone (301) 443–6106.

Dated: October 1, 1991.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 91–24045 Filed 10–4–91; 8:45 am]
BILLING CODE 4160–20–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for October 1991.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The meeting of the Advisory Committee of the Task Force on Homelessness and Severe Mental Illness will include discussion of issues relevant to the homeless mentally ill population. This meeting will be open, however, attendance by the public will be limited to space available.

Committee Name: Advisory Committee of the Task Force on Homelessness and Severe Mental Illness.

Meeting Date: November 6, 1991.

Place: Stonehenge, room 615F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Open: November 6, 9 a.m.—5 p.m.

Contact: Jane Steinberg, Ph.D., room 11C–05, Parklawn Building, Telephone (301) 443–0000.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee.

Meeting Date: November 6–8, 1991.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Open: November 6, 9 a.m.—10 a.m.

Closed: Otherwise.

Contact: Gloria Yockelson, room 9C–05, Parklawn Building, Telephone (301) 443–0948.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee.

Meeting Date: November 13–15, 1991.

Place: Avenue Plaza Suite Hotel, 2111 St. Charles Avenue, New Orleans, LA 70130.

Open: November 13, 9 a.m.—10 a.m.

Closed: Otherwise.

Contact: Sheri Schwartzback, room 9C–05, Parklawn Building, Telephone (301) 443–4843.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee.

Meeting Date: November 15–16, 1991.

Place: Avenue Plaza Suite Hotel, 2111 St. Charles Avenue, New Orleans, LA 70130.

Open: November 15, 8:30 a.m.—9:30 a.m.

Closed: Otherwise.

Contact: Monica Woodfork, room 9C–05, Parklawn Building, Telephone (301) 443–4843.

Committee Name: Clinical, Psychosocial, and Behavioral Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Review Committee.

Meeting Date: November 21–22, 1991.

Place: The Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Open: November 21, 8:30 a.m.—9:15 a.m.

Closed: Otherwise.

Contact: Regina Thomas, room 9C–15, Parklawn Building, Telephone (301) 443–6470.

Committee Name: Psychobiological, Biological, and Neurosciences Subcommittee of the Mental Health Acquired Immunodeficiency Syndrome Research Review Committee.

Meeting Date: November 21–22, 1991.

Place: The Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Open: November 21, 8:30 a.m.—9:15 a.m.

Closed: Otherwise.

Contact: Rehana Chowdhury, room 9C–15, Parklawn Building, Telephone (301) 443–6470.

Dated: October 1, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–24046 Filed 10–4–91; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

CDC Advisory Committee on the Prevention of HIV Infection: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on the Prevention of HIV Infection.

Times and Dates: 8:30 a.m.–5:15 p.m., October 30, 1991; 8:30 a.m.–2:30 p.m., October 31, 1991.

Place: Sheraton Century Center Hotel, 2000 Century Boulevard, NE, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts, including maintaining surveillance of AIDS and HIV infection, the epidemiologic and laboratory study of AIDS and HIV, information/education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Matters to be Discussed: The committee will discuss actions taken by CDC on the recommendations made by the committee during the April 17–18, 1991, meeting and current CDC approaches to pediatric HIV/AIDS issues. In-depth discussions will lead to development of a preliminary list of recommendations regarding CDC methods and approaches.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Deputy Director (HIV), CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918 or FTS 236–2918.

Dated: October 1, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–24038 Filed 10–4–91; 8:45 am]

BILLING CODE 4160–18–M

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on November 21, 1991, at the National Institutes of Health, Bethesda, Maryland 20892, from 8 a.m. to 5 p.m., in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussion of (1) The NIH Strategic Plan, and (2) Indirect Cost.

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, room 103, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: September 30, 1991.

Samuel C. Rawlings,

Acting Committee Management Officer, NIH.

[FR Doc. 91–24089 Filed 10–4–91; 8:45 am]

BILLING CODE 4140–01–M

Meeting of a Subcommittee of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of a Subcommittee of the Advisory Committee to the Director, NIH, on November 13, 1991, at the National Institutes of Health, Bethesda, Maryland 20892, from 8:30 a.m. to 5 p.m., in the Shannon Building, Wilson Hall. The meeting will be devoted to discussion of the "Department of Health and Human Services Study of Indirect Cost." The meeting will be open to the public.

The Executive Secretary of the Advisory Committee, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, room 103, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: September 30, 1991.

Samuel C. Rawlings,

Acting Committee Management Officer, NIH.

[FR Doc. 91–24090 Filed 10–4–91; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on November 7 & 8, 1991, The Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public on November 7, 1991, from 8 a.m.

to 9 a.m., to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 7 from 9 a.m. to recess and on November 8 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, room 834, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93,395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: September 24, 1991.

Samuel C. Rawlings,

Acting Committee Management Officer, NIH.

[FR Doc. 91–24091 Filed 10–4–91; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, October 17–18, 1991, The Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on October 17 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 17 from 9:30 a.m. to recess and on October 18 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Susan E. Feinman, Scientific Review Administrator, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, room 809, Bethesda, Maryland 20892 (301/402–0944) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: September 24, 1991.

Samuel C. Rawlings,

Acting Committee Management Officer, NIH.

[FR Doc. 91–24092 Filed 10–4–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, November 1, 1991, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The entire meeting will be open to the public from 9:00 a.m. on November 1 to adjournment on November 1. Attendance by the public will be limited to space available. The Board will review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research and shall advise on the provisions of the statute-required comprehensive plan for the conduct and support of medical rehabilitation research.

Ms. Mary Plummer, Board Secretary, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide substantive program information. If you have specific disability-related requirements please call.

Dated: September 30, 1991.

Samuel C. Rawlings,

Acting Committee Management Officer, NIH.

[FR Doc. 91–24093 Filed 10–4–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of NIDR Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Special Grants Review Committee, National Institute of Dental Research, November 4–6, 1991, in the Montgomery I Meeting Room, Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to the public from 8:30 to 9 a.m. on November 4 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 4 from 9 a.m. to recess, on November 5 from 8:30 a.m. to recess and on November 6 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, NIH, Westwood Building, room 519, Bethesda, MD 20892, (telephone 301/496–7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health)

Dated: September 24, 1991.

Samuel C. Rawlings,

Acting Committee Management Officer, NIH.

[FR Doc. 91-24094 Filed 10-4-91; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections:

Safety and Occupational Health, Dr. Gopal Sharma, Westwood Bldg., rm. 219C, Tel. 301-496-6723, Oct. 16-18, 8 a.m., Holiday Inn, Bethesda, MD

Lung Biology and Pathology, Dr. Anne Clark, Westwood Bldg., rm. A10, Tel. 301-496-4673, Oct. 21-23, 8 a.m., Holiday Inn, Bethesda, MD

The meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. The meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator.

(Catalog of Federal Domestic Assistant Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: September 24, 1991.

Samuel C. Rawlings,

Acting Committee Management Officer, NIH.

[FR Doc. 91-24095 Filed 10-4-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina, on October 24, 1991.

The meeting will be open to the public from 9 a.m. to 3 p.m. in the Conference Center. The preliminary agenda topics with approximate times are as follows:

9 a.m.-10:30 a.m.—Review of Research Activities on Protein Modulation During Cell Transformation of the Chemical Carcinogenesis Mechanisms Group, Division of Toxicology Research and Testing, NIEHS.

10:45 a.m.-11:45 a.m.—Review of Chemicals Nominated for NTP studies. Six chemicals will be reviewed. Five of the chemicals were evaluated by the NTP Chemical Evaluation Committee (CEC) on August 8, 1991, and are (with CAS Nos. in parentheses): (1) Benzophenone (119-61-9); (2) Benzyltrimethylammonium Chloride (56-93-9); (3) 1,2,3,4-Butanetetracarboxylic Acid (1703-58-8); (4) Halazone (80-13-7); and (5) Pentaerythritol Triacrylate (3524-68-3). One chemical was reviewed by the CEC on March 13, 1991: Trimethylolpropane Triacrylate (15625-89-5).

12:45 p.m.-1 p.m.—Report of the Director, NIP

1 p.m.-1:15 p.m.—Update on Activities of the Technical Reports Review Subcommittee

1:15 p.m.-2 p.m.—Overview and Comments on the Heritable Effects Research Program, DTRT, NIEHS

2 p.m.-3 p.m.—Concept Reviews

A. Development and Evaluation of In Vivo Rodent Model Systems Utilizing Targeted Gene "Knock-Out" of Potential Suppressor Genes

B. Neurotoxicity Evaluation of Environmental Agents

C. Quality Assurance Audit Report

D. Predictive Toxicology Methods Development

In accordance with the provisions set forth in section 552b(c)(6) title 5 U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public on October 24 from 8:15 a.m. to 9 a.m. and from 3:15 p.m. to adjournment for further evaluation of the research activities in the Chemical Carcinogenesis Mechanisms Group, DTRT, NIEHS, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone 919-541-3971, FTS 629-3971, will have available a roster of Board members and expert consultants and other program information prior to the meeting and summary minutes subsequent to the meeting.

Dated: September 16, 1991.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 91-24096 Filed 10-4-91; 8:45 am]

BILLING CODE 4140-01-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meetings

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, October 18, 1991. The meeting will be held in the Monterey Room at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, California, beginning at 9 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Major; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Section 106 Cases
IV. New Business
V. Adjourn

Note: The meetings of the Council are open to the public. If you need special

accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: September 26, 1991.

Robert D. Bush,

Executive Director.

[FR Doc. 91-24014 Filed 10-4-91; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-060-01-3110-10-D999; I-28415]

Exchange of Public Lands; Idaho: Correction

AGENCY: Bureau of Land Management.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects the legal description previously published in the **Federal Register** August 21, 1991, (Vol. 56, No. 162) on page 41564. The second line in the column labeled "Boise Meridian Idaho" published as "Sec. 3, lot 3, SE ¼ SW¼" should be corrected to "Sec. 3, lot 3, SE¼NW¼."

Dated: September 24, 1991.

John B. O'Brien III,

Acting District Manager.

[FR Doc. 91-24013 Filed 10-4-91; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095). Comments and questions about the items on the list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Attestation by Employers using Alien Crewmembers for Longshore Activities in U.S. Ports

ETA 9033

Annually

Individuals or households; State or local governments; Businesses or other for profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

5,000 respondents; 20,000 total hours; 4 hours response; 1 form

The information provided on this form by employers seeking to use alien crewmembers to perform longshore work at U.S. Ports will permit DOL to meet federal responsibilities for program administration, management and oversight.

UNEMPLOYMENT COMPENSATION FOR FORMER FEDERAL EMPLOYEES, HANDBOOK NO. 391

Form #	Affected public	Respondents	Frequency	Average time per response
ES 931	Individuals or households, State or local govt; Federal Agencies or employees.	140,649	One-time	3 minutes
ES 931A	do	32,349	One-time	3 minutes.
ES 935	do	140,649	One-time	5 minutes.
ES 933	do	2,360	One-time	3 minutes.
ES 934	do	14,065	One-time	3 minutes.
ES 936	do	7,032	One-time	3 minutes.
ES 939	do	77	One-time	1hr 45 min.
ETA 8-32	do	53	One-time	5 minutes.

21,218 total hours

Federal law (5 U.S.C. 8501-8509) provides unemployment insurance protection to former (or partially unemployed) Federal civilian employees. It is referred to, in abbreviated form, as "UCFE". The forms contained throughout the UCFE

Handbook are used in connection with the provision of this benefit assistance.

Attestation by facilities Temporarily Employing Nonimmigrant Aliens as Registered Nurses

1205–0305; ETA 9029

On occasion

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

1,024 respondents; 11,415 total hours; 11 hours 8 minutes per response; 1 form

The information on this form by Health Care Facilities will permit DOL to meet Federal responsibilities for program administration, management and oversight.

Signed at Washington, DC this 1st day of October, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91–24061 Filed 10–4–91; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-23,874]

General Motors Corp., Boc Linden, Linden, New Jersey; Negative Determination on Reconsideration

Pursuant to a U.S. Court of International Trade order in *United Auto Workers, Local 595,* v. *Secretary of Labor* (USCIT 90–05–00263), dated June 7, 1991, the Department, on reconsideration is affirming its initial denial of eligibility to apply for adjustment assistance for workers at General Motors Corporation's BOC plant in Linden, New Jersey.

The workers at Linden produce Chevrolet Beretta and Corsica passenger automobiles. The Department used price and general vehicle configuration in grouping these models in the subcompact/compact classification.

The Department's initial denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. Both the subject models and imports experienced an absolute sales decline and a market share loss in 1989. Other domestic autos in the subcompact/compact classification increased their market share at the expense of the subject models as well as the imported models.

The UAW appealed for judicial review on the basis that the Department's classification system was biased.

The Court, in remanding the Department's investigation ordered that Labor explain why certain vehicles were included in or excluded from the Department's classification system. Labor was also ordered to include all copies of pages from all sources consulted by Labor in the supplemental record.

Attached as an Addendum is a model-by-model listing of domestic and imported vehicles with an explanation of why they are included in OTAA's classification system and a response to the UAW's July 19, 1991 submission.

On reconsideration, the Department carefully considered the union's critique and found that in some cases the union's critique was correct and that certain vehicles should be excluded from the analysis. All of these exclusions, however, are imported vehicles. Most of the exclusions are vehicles that are too small or too inexpensive to be like or directly competitive with the subject vehicles.

The Department on remand revised its analysis by excluding the imported vehicles which did not fit the price or general vehicle configuration tests. The result of the revised analysis is the same as in the original investigation—the subject vehicles and import segment both lost market share while the other domestic segment gained market share.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of General Motors Corporation's BOC plant in Linden, New Jersey.

Signed at Washington, DC, this 30th day of September 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

Addendum

I. Reconsideration of Previous Determination

The responsibility of OTAA is to determine whether imports of products like or directly competitive with Chevrolet Corsicas and Berettas produced at Linden, New Jersey contributed importantly to the unemployment or underemployment of workers at the plant. Determining which vehicles are like or directly competitive with each other is not a matter upon which all, or even most, analysts of the United States automobile market can agree. There is no generally accepted system or method for separating the U.S. market into classifications or submarkets. Therefore, OTAA has constructed a method of determining which vehicle makes and models may have contributed importantly to unemployment or underemployment at the subject plant.

The OTAA method begins with an examination of the subject vehicles' general configuration and price. The factors which determine general vehicle configuration are overall size, passenger accommodations, cargo capacity, and engine availability. The subject vehicles are compact cars, in two-door and four-door versions, which accommodate four adults, along with a substantial amount of luggage or other cargo. The subject vehicles have either four-cylinder or small six-cylinder engines.

Many vehicles are offered in the U.S. market which are configured in the same general way as the subject vehicles. These vehicles are not identical in every particular measurement, but they all serve the same general purposes and compete in the same market segment. A vehicle's overall configuration and market position do not correlate exactly with any particular measurement of its size. Most vehicle purchasers do not know the exact figures for such measurements as wheelbase, overall length, width, and so forth. Therefore, such measurements should be used only as guides, not as hard and fast rules, for deciding whether a particular vehicle is competitive with any other particular vehicle.

Price is the other important factor determining whether vehicles are competitive with each other. However, determining the actual price paid for a car, as opposed to any announced base price or the price on the window sticker, is impossible. Buyers and sellers negotiate car prices, and there have been many factory rebate schemes and other dealer incentives. Therefore, it is possible for vehicles whose published prices are very different actually to sell for similar prices. As with measurements, price figures should be used only as guides, not as hard and fast rules.

The groups of domestic and imported vehicles which are like or directly competitive with the subject vehicles were constructed by OTAA using the criteria of vehicle configuration and price. Much more importance was given to passenger and cargo accommodations and general price range than to any particular measurement (i.e. wheelbase, overall length, etc.). OTAA found that small four-passenger cars whose base prices generally fell into the $8,000 to $10,000 range were the relevant competitive vehicles. Most of these cars were offered in both two-door and four-door versions, as were the subject vehicles. Some were four-door models only. Sales of all of the vehicles included might have contributed importantly to unemployment or underemployment at the subject plant.

The following is a model-by-model explanation regarding the actual vehicle makes and models included in the OTAA classification system. In several instances, both OTAA and the UAW agree that particular makes and models should be included in the analysis (UAW "Critique of DOL Segment Analysis," Attachment D). In these cases, OTAA does not include a separate discussion of such vehicles. The

actual makes and models upon which both parties agree are: Plymouth Sundance and Dodge Shadow (Chrysler P-bodies); Volkswagen Golf and Jetta; Honda Civic; Ford Tempo and Mercury Topaz; Dodge Aries and Plymouth Reliant (Chrysler K-bodies); Chevrolet Cavalier, Pontiac Sunbird, Buick Skyhawk, and Oldsmobile Firenza (GM J-bodies); Honda Accord; Pontiac Grand Am, Buick Skylark, and Oldsmobile Calais (GM N-bodies); Subaru Loyale; Subaru Sedan and Hatchback Coupe.

Domestic Vehicles

Ford Escort and Mercury Lynx

These cars are essentially identical to each other. While they have wheelbase measurements somewhat smaller than the Corsica/Beretta, they meet the two important criteria. That is, they fall into the relevant price range and they are of the relevant general vehicle configuration. They are offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that these models should be included in the market classification.

Nissan Sentra

While this vehicle has a wheelbase measurement somewhat smaller than the Corsica/Beretta, it meets the two important criteria. That is, it falls into the relevant price range and is of the relevant general vehicle configuration. It is offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that these models should be included in the market classification.

Toyota Corolla and Geo Prizm

These cars are essentially identical to each other. While they have wheelbase measurements somewhat smaller than the Corsica/Beretta, they meet the two important criteria. That is, they fall into the relevant price range and they are of the relevant general vehicle configuration. They are offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that these models should be included in the market classification.

Dodge Omni and Plymouth Horizon

In overall size and passenger accommodation, these vehicles are nearly identical to the Corsica. Although the Omni and Horizon were sold only as four-door models, DOL must take into account any vehicle that contributes importantly to decreases in production and employment at the subject firm. Clearly, the Omni and Horizon could contribute importantly to such declines. Therefore, the Omni and Horizon should be included in the competitive classification.

Toyota Camry

This car is the same size and configuration as the Corsica; it cannot be excluded simply because it is sold only as a four-door. While its base price is a few hundred dollars above the upper limit, this vehicle offers more standard equipment than the subject vehicles and its well-equipped prices are fully competitive with those of the top subject vehicles. This vehicle clearly belongs in the competitive classification.

Mazda 626

This car is the same size and configuration as the Corsica; it cannot be excluded simply because it is sold only as a four-door. While its base price is a few hundred dollars above the upper limit, this vehicle offers more standard equipment than the subject vehicles and its well-equipped prices are fully competitive with those of the top subject vehicles. This vehicle clearly belongs in the competitive classification.

Plymouth Acclaim and Dodge Spirit

These cars are the same size and configuration as the Corsica; they cannot be excluded simply because they are sold only as four-door models. While their base prices are a few hundred dollars above the upper limit, these vehicles offer more standard equipment than the subject vehicles and their well-equipped prices are fully competitive with those of the top subject vehicles. These vehicles clearly belong in the competitive classification.

There are no other disagreements about makes and models included in the domestic segment of the classification system. Therefore, DOL concludes that the domestic vehicles included in the original classification system were the correct ones and that no changes need to be made in this regard.

Imported Vehicles

Isuzu I-Mark

While this vehicle has a wheelbase measurement somewhat smaller than the Corsica/Beretta, it meets the two important criteria. That is, it falls into the relevant price range and is of the relevant general vehicle configuration. It is offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that this model should be included in the market classification.

Geo Spectrum

While this vehicle has a wheelbase measurement somewhat smaller than the Corsica/Beretta, it meets the two important criteria. That is, it falls into the relevant price range and is of the relevant general vehicle configuration. It is offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that this model should be included in the market classification.

Mercury Tracer

While this vehicle has a wheelbase measurement somewhat smaller than the Corsica/Beretta, it meets the two important criteria. That is, it falls into the relevant price range and is of the relevant general vehicle configuration. It is offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that this model should be included in the market classification.

Nissan Sentra

This vehicle is identical to its domestic counterpart and is included for the same reasons.

Toyota Corolla

This vehicle is identical to its domestic counterpart and is included for the same reasons.

Mazda 323 and Protege

These cars are essentially the same. They have wheelbase measurements somewhat smaller than the Corsica/Beretta, but they meet the two important criteria. That is, they fall into the relevant price range and they are of the relevant general vehicle configuration. They are offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that these models should be included in the market classification.

Mitsubishi Mirage and Eagle Summit

These cars are essentially identical to each other. While they have wheelbase measurements somewhat smaller than the Corsica/Beretta, they meet the two important criteria. That is, they fall into the relevant price range and they are of the relevant general vehicle configuration. They are offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that these models should be included in the market classification.

Subaru Hatchback and Sedan

These cars are essentially identical to each other. While they have wheelbase measurements somewhat smaller than the Corsica/Beretta, they meet the two important criteria. That is, they fall into the relevant price range and they are of the relevant general vehicle configuration. They are offered in both two-door and four-door versions which accommodate four adults and their cargo. In view of the fact that the important price and vehicle configuration criteria are satisfied, DOL continues to believe that these models should be included in the market classification. (Note: sales data for the Subaru wagon are included in the published figures for the hatchback and sedan. This is an unavoidable data problem. However, sales of the wagon do not account for a significant part of the total.)

Acura Integra

The Acura Integra is offered in both two-door and four-door versions (three-door and five-door, if the hatchback is included), fall into the relevant price range, and fall into the relevant size and accomodation ranges. Clearly, these vehicles should remain in the classification system.

Eagle Medallion

In overall size and passenger accommodation, this vehicle is nearly identical to the Corsica. Although it was sold only as a four-door model, DOL must take into account any vehicle that might contribute importantly to decreases in production and employment at the subject firm. Clearly, the Medallion could contribute importantly to such declines.

Mazda 626 and Toyota Camry

These are identical to their domestic counterparts and remain in the classification system for the same reasons.

Nissan Stanza

This car is the same size and configuration as the Corsica; it cannot be excluded simply because it is sold only as a four-door. While its base price is a few hundred dollars above the upper limit, its well-equipped prices are fully competitive with those of the subject vehicles. This vehicle clearly belongs in the competitive classification.

Hyundai Sonata

This car is the same size and configuration as the Corsica; it cannot be excluded simply because it is sold only as a four-door. While its base price is a few hundred dollars above the upper limit, its well-equipped prices are fully competitive with those of the subject vehicles. This vehicle clearly belongs in the competitive classification.

Amendments to the OTAA Analysis

DOL has carefully considered the UAW written critique and their oral critique presented on August 19, 1991 at the offices of OTAA. For the reasons presented above, DOL finds that the critiques are not sufficient in most cases to change the vehicles that are considered like or directly competitive with the subject vehicles. However, in some cases, DOL finds that the UAW critique is correct and that certain vehicles should be excluded from the analysis. This section of the DOL response lists those vehicles, the reasons for excluding them, and the effect of the exclusions on the decision with respect to import impact on sales and production of the subject vehicles.

All of the exclusions are imported vehicles. Most of the exclusions are because the vehicles in question are simply too small and too inexpensive to be like or directly competitive with the subject vehicles. If DOL erred here, it was in the direction of trying to include any and all imported cars that might have affected the subject vehicles. To correct the error, we exclude the following vehicles as too small and/or too inexpensive:

Chevrolet Sprint
Suzuki Swift
Subaru Justy
Ford Festiva
Daihatsu Charade
Volkswagen Fox
Dodge and Plymouth Colt
Mitsubishi Precis
Hyundai Excel
Toyota Tercel
Pontiac LeMans

The Subaru XT Coupe and Subaru Legacy should not have been included because they are not of the proper general vehicle configuration nor are they in the correct price range. When the original investigation was conducted, DOL did not have sales figures for individual Subaru models available to it. These figures are now available, and we incorporate them into the present analysis by excluding the XT Coupe and the Legacy.

At the time of the original investigation, General Motors was planning to produce a convertible version of the Beretta. Prototypes of the convertible had been shown in the industry press. In view of this fact, the Volkswagen Cabriolet was included in the analysis. After the DOL decision was issued, GM dropped the convertible Beretta; it never entered production. Therefore, in the present revised analysis, DOL excludes the VW Cabriolet from the classification system. Having made all of the exclusions discussed above, and using final revised data rather that the unrevised preliminary data used in the original investigation because that was all that was available, DOL reanalyzed the subcompact/compact market in which the subject vehicles compete. The results are as follows.

RETAIL SALES—SUBCOMPACT/COMPACT CARS

[Quantity: Thousands of Units]	Calendar year	Subject vehicles	Other domestic	Imports	Total market
1988	380.3	2,610.9	1,582.9		4,574.1
1989	326.1	2,561.3	1,365.5		4,252.9
Difference:	−54.12	−49.6	−217.4		−321.2

MARKET SHARE—SUBCOMPACT/COMPACT CARS

Calendar year	[Percent]		
	Subject vehicles	Other domestic	Imports
1988	8.3	57.1	34.6
1989	7.7	60.2	32.1
Share Point Difference:	−0.6	+3.1	−2.5

In this market, the subject vehicles and the import segment both lost market share, while the other domestic segment gained market share. Therefore, the conclusion is the same as in the original investigation. That is, increased imports did not contribute importantly to declines in production and employment at the subject plant.

II. Response to UAW Critique of Previous Determination

The UAW submitted several documents in support of its contention that OTAA's methods were flawed. The most detailed of these is the document entitled "Critique of DOL Segment Analysis." This critique begins with five points; we respond to each of these in order.

1. All vehicles assembled outside the United States were counted as imports. In most cases, published sources for retail sales figures (MVMA RS–1; Ward's Automotive Reports) distinguish between U.S. and imported vehicles which are sold under the same make and model names. In some cases, this distinction is not made. In the Appendix attached to the Production and Retail Sales tables in the original investigation, reference is made to an OTAA staff survey as a source for some of the import data. This survey covers imports by the big three American manufacturers and is used to obtain import figures where they are not publicly available. The actual survey responses are contained in the Supplemental Administrative Record.

2. OTAA did not count any imported vehicles as domestics.

3. In the case of Subaru, all Subaru models were included in the original analysis. In the original investigation case file, a memorandum establishing the classification system is included. The memorandum states that all results are based on data available to OTAA at the time of the investigation. At that time, there were no available sales

statistics for individual models of Subarus. In any case, OTAA has addressed this point in the current reconsideration by including only those Subaru models which are like or directly competitive with the subject models and excluding all other Subarus.

4. OTAA did not ignore the effect of combined imported and domestic sales of vehicles. See 1. above.

5. Unfortunately, there is a typographical error in the original case file. OTAA did not include any data for the Geo Storm, for two reasons: (a) It is a 2+2 sports coupe, a vehicle type which is specifically excluded from the analysis, and (b) it was not introduced until model year 1990, so is outside the scope of the investigation. This also means that published data prior to 1990 could only be for the Spectrum; there is no confusion arising from combination of Spectrum and Storm data in later years. The list of imported vehicles in the import category should have included the Spectrum; the data in all tables reflects the inclusion of the Spectrum. The reasons for including the Spectrum in the analysis are discussed above.

The second part of the UAW critique consists of "adjustments" to OTAA's classification system. While the reconsideration analysis responds to these arguments, we include further detail below.

1. OTAA made no suggestion, explicit or implied, that the two-door Beretta and the four-door Corsica "compete with somewhat different sets of models." Emphasis was added to the assertion that two-door competing models should seat four adults in order to reinforce the fact that 2+2 sports coupes do not belong in the classification system. In addition, the UAW footnote is a complete misreading of what OTAA stated in the investigative file. OTAA has always clearly and explicitly listed all makes and models included in the analysis.

2. The issue of vehicle prices is crucial in any auto market analysis. Buyers attach great importance to the actual delivered price of a vehicle; this point is a very obvious one. Determining actual prices paid, as opposed to announced base prices or prices printed on window stickers, is impossible. However, domestic manufacturers and their dealers differed from importers and their dealers in the way that actual purchase prices differ from any published figures.

In 1988 and 1989, the periods relevant to the analysis, no importers were offering rebates on vehicle purchases. At the same time, domestic manufacturers were offering rebates of $1,000 or even more. In addition, dealers selling domestic vehicles tended to reach an agreed selling price significantly lower than the sticker price much more than dealers selling imports. These factors combined mean that any analyst of the auto market who is considering the effect of prices on vehicle purchases must adjust published prices of domestic vehicles significantly downward before comparing them to the published prices of imports.

In the present case, these factors mean that imports having significantly lower published prices come into direct competition with the subject L-body vehicles once the proper adjustments are made to take actual purchase price as accurately as possible into consideration. For these reasons, the OTAA price boundary extends lower than the UAW deems proper. This fact overshadows other considerations; for example, an imported vehicle with a relatively short wheelbase which still accommodates four adults and their luggage might come into direct competition with the subject vehicles. OTAA's classification system takes these factors into account.

The UAW also asserts that the OTAA base price range excludes the subject vehicles. However, in the UAW Brief to the Court of International Trade (page 3), base prices are quoted for the subject vehicles which fall into the OTAA base price range. OTAA agrees with the latter figures.

The crucial point is this: directly comparing published base prices or sticker prices of domestic vehicles and imported vehicles is not correct. Actual delivered prices determine buyer behavior. Although such prices are impossible to determine exactly, the necessary qualitative adjustments to published prices of domestic vehicles are clear.

3. The UAW criticism of the OTAA wheelbase criterion adjusts the latter only by increasing the upper limit by four-tenths of an inch, a difference of only .004 percent. Rounded to the nearest inch, the wheelbases of the subject models fall into the original OTAA range.

More important is the fact that some of the models included in the OTAA analysis have wheelbases shorter than the lower limit of 97 inches. It is probably true that the vast majority of vehicle buyers do not know the exact wheelbase measurement (especially not the nearest one-tenth inch) of the vehicles they buy. What they know is the general size, price, and vehicle configuration. During the course of the subject investigation, OTAA found that some vehicles outside the originally specified wheelbase range could be considered competitive on the basis of the much more important criteria of price and general configuration. Since it is OTAA's responsibility to consider any factor which might contribute to the unemployment or underemployment of workers at the subject plant, it was necessary to include in the market classification vehicles which might not strictly meet all four standards.

In addition, in the reconsideration presented herein, many vehicles which are significantly shorter than the lower wheelbase limit were excluded from the analysis. It was found that the original decision remained correct.

4. The UAW and OTAA do not appear to have any significant differences with regard to the engine availability criterion.

The UAW produces a market classification based upon its "adjusted" criteria, which are summarized on page 4 of the UAW critique. The adjusted criteria are serious distortions of the original OTAA intent and also of reasonable market analysis and of the obligations of OTAA under the Trade Act of 1974.

1. The "adjusted" UAW criteria insist that all vehicles in the market segment be offered in both two-door and four-door versions. OTAA never insisted on this point. While we thought that vehicles should "generally" be available in both forms, we recognized that some vehicles available in only one form or the other could have contributed importantly to worker dislocation at the subject plant. It is true that the domestic competitors tend to be offered in both forms more than the imported competitors, but OTAA must consider any vehicle that contributes importantly to the decrease in production and employment, which both OTAA and the UAW agree occurred, at the subject plant.

2. The issue of base price is addressed fully above, but it bears repeating that the published base prices of domestic vehicles were much more different from the actual selling prices than was the case for imports. In general, significant downward adjustments of published prices for domestics are necessary to establish a proper range for true competitive prices. True competitive prices are at least as important as any other criterion for consumers in the selection of vehicles to purchase.

3. The UAW "adjustment" to the OTAA criterion for wheelbase measurement amounts to only .004 percent of the upper limit. What is important in the wheelbase criterion is to help establish a general size criterion for competitive vehicles. However, this criterion only helps do this; overall vehicles size characteristics such as passenger and luggage accommodations do not relate to wheelbase in the same way for many domestic vehicles as for equivalent imported vehicles. Imported vehicles tended strongly to be designed more efficiently. That is, for given passenger and luggage accommodations, many imported vehicles have shorter wheelbases than domestic competitors.

The UAW then goes through a short section of data methodology. Such criticisms as are contained there have been addressed above.

Finally, the UAW critique gives a model-by-model discussion of models included and excluded under their "adjusted" criteria. The "adjusted" criteria are seriously in error. The obligation of OTAA is to consider any domestic and imported products which might contribute importantly to the unemployment or underemployment of workers at the subject plant. In almost all cases, the "adjusted" UAW criteria exclude particular vehicles on only one criterion.

In particular, the UAW critique excludes many domestic and imported vehicles on the basis that the vehicles are only offered in two-door or four-door version, not both. It is certainly possible that increased sales of imported vehicles which are sold only in one form or the other could have contributed importantly to the separation of workers at the subject plant, because the workers are not separately identifiable by whether they produce Corsicas or Berettas. The UAW critique has completely misunderstood the OTAA description of competitive vehicles as "generally" being offered in both two-door and four-door models. What OTAA intended as to concentrate on two-door and four-door vehicles which accommodate four adults and their cargo. Such vehicles are often sold in both two-door and four-door forms; OTAA

recognizes that imported vehicles which are sold only in one form or the other could contribute importantly to worker separation as long as they fell into the general price and vehicle configuration classification.

Virtually all other discrepancies are due to the fact that the price criterion can encompass certain vehicles whose wheelbases are shorter than 97 inches. However, the delivered price criterion is much more important than a specific wheelbase number. In addition, all of the vehicles which are a lot shorter than the subject vehicles have been excluded from the analysis in the present reconsideration.

In the UAW briefs to the Court of International Trade, reference is made to the Chevrolet Celebrity, Pontiac 6000, and Oldsmobile Ciera. These vehicles are all essentially the same; they comprise the GM A-body class of cars. There is also a Buick A-body, the Century.

OTAA did not include GM's A-body vehicles in its analysis of vehicles like or directly competitive with the subject L-body vehicles because the A-body vehicles are significantly different. They are larger, more expensive, and accommodate more passengers and cargo.

In the U.S. car market, there are many makes and models which fall into the subcompact/compact category; there is a significant gap between these vehicles and those which are usually called "intermediate." The GM A-bodies are intermediate automobiles, they are longer, wider, and heavier than the subcompact/compact vehicles and can hold five adults and their luggage.

As noted above, since the U.S. car market is so diverse, it is incorrect to include all available models in any market analysis. The gap between subcompact/compact cars and intermediate cars is a significant one; OTAA reasonably chose to use that gap as its demarcation between vehicles like or directly competitive with Corsicas and Berettas and those not like or directly competitive with the subject models. The UAW suggests that the existing gap is insignificant. If that reasoning is followed, one must eventually conclude that all cars available in the U.S. market are like and directly competitive with all other cars available in the market.

The UAW also submitted market analyses by two outside consulting firms. OTAA carefully considered these analyses, but concludes that their main contribution is to show that serious auto market analysts differ in the ways they analyze the market, and their conclusions differ also. There is nothing in either analysis that demonstrates in any way that the OTAA approach is wrong.

[FR Doc. 91-24060 Filed 10-4-91; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Island Creek Co.

[Docket No. M-91-76-C]

Island Creek Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (quantity and location of firefighting equipment; belt conveyors) to its Hamilton No. 2 Mine (I.D. No. 15-02706) located in Union County, Kentucky. The petitioner proposes to install a waterline in the supply entry, adjacent to the conveyor belt entry, with fire hydrants (water outlets) located at a crosscut connecting the supply entry and the belt entry.

2. Southern Ohio Coal Co.

[Docket No. M-91-77-C]

Southern Ohio Coal Company, P.O. Box 552, Fairmont, West Virginia 26555-0552 has filed a petition to modify the application of 30 CFR 75.1003-2(f)(1)(i) (requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present) to its Martinka Mine (I.D. No. 46-03805) located in Marion County, West Virginia. The petitioner proposes to use a combination of inby and outby power with dual feed rectifiers to power trolley wires and trolley feeder wires to move or transport off-track equipment.

3. McElroy Coal Co.

[Docket No. M-91-78-C]

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. Due to deteriorating roof conditions, the petitioner proposes to establish evaluation points to monitor hazardous conditions.

4. Eastern Coal Corp.

[Docket No. M-91-79-C]

Eastern Coal Corporation, P.O. Box 219, Stone, Kentucky 41567 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Stone No. 4 Mine (I.D. No. 15-02096) located in Pike County, Kentucky. Due to deteriorated roof conditions, the petitioner proposes to establish evaluation points to monitor hazardous conditions.

5. Kenellis Energies, Inc.

[Docket No. M-91-80-C]

Kennellis Energies, Inc., Route 2, Box 74, Galatia, Illinois 62935-9620 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Brushy Creek Mine (I.D. No. 11-02636) located in Saline County, Illinois. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure instead of ventilating the equipment to the return.

6. Bullion Hollow Mining Co., Inc.

[Docket No. M-91-81-C]

Bullion Hollow Mining Company, Inc., Route 1, Box 1090, Wise, West Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 2 Mine (I.D. No. 15-13308) located in Knott County, Kentucky. The petitioner states that the use of canopies and cabs on equipment will result in a diminution of safety to the equipment operator.

7. Crystal Springs, Inc.

[Docket No. M-91-82-C]

Crystal Springs, Inc., P.O. Box 349, Red Jacket, West Virginia 25692 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 1 Mine (I.D. No. 15-15887) located in Pike County, Kentucky. The petitioner proposes to use technologically advanced long hole drilling equipment to pre-drill the entire area to be mined.

8. Homestake Mining Co.

[Docket No. M-91-16-M]

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.18025 (working alone) to its Lead Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petitioner requests modification of the standard to eliminate the requirement to have a "partner" or second person assigned to work with each jumbo drill operator.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in the office on or before November 6, 1991. Copies of these petitions are available for inspection at that address.

Dated: September 30, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-24062 Filed 10-4-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 6 and 23, 1991, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued to the following individuals on September 26, 1991:

J. Robie Vestal
Mahlon Kennicutt
Arthur L. DeVries

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-23992 Filed 10-4-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Co.; Comanche Peak Steam Electric Station, Units 1 and 2 Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Ms. Betty Brink, dated November 20, 1990, on behalf of Citizens for Fair Utility Regulation (CFUR) with regard to Comanche Peak Steam Electric Station.

The Petitioner requested that a proceeding or such other action as may be proper be instituted to determine if the operating license for the Comanche Peak nuclear facility should be revoked, modified, or suspended.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Pursuant to 10 CFR 2.206," (DD-91-05) 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 for the Comanche Peak Steam Electric Station, at the University of Texas at Arlington Library, Government Publication/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 27th day of September 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-24006 Filed 10-4-91; 8:45 am]

BILLING CODE 7590-01-M

Event Reporting Systems (10 CFR 50.72 and 50.73): Clarification of NRC Systems and Guidelines for Reporting Availability of Draft Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability for public comment of draft report, NUREG-1022, Revision 1, "Event Reporting Systems—10 CFR 50.72 And 50.73: Clarification of NRC Systems and Guidelines for Reporting."

DATES: The comment period expires December 6, 1991.

ADDRESSES: Send comments to David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A free single copy of draft NUREG-1022, Revision 1, may be requested by those considering public comment by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy also is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John L. Crooks, Chief, Data Management Section, Trends and Patterns Analysis Branch, Division of Safety Programs, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Mail Stop MNBB 9112, Washington, DC 20555. Telephone 301/492-4425.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has published draft NUREG-1022, Revision 1, "Event Reporting Systems—10 CFR 50.72 and 50.73—Clarification of NRC Systems and Guidelines for Reporting." The document provides proposed clarification of the immediate notification requirements of 10 CFR 50.72 and the 30-day written licensee event report (LER) requirements of 10 CFR 50.73 for nuclear power plants. This document will replace NUREG-1022 and its Supplements 1 and 2.

The purposes of this document are to ensure events are reported as required by improving 10 CFR 50.72 and 50.73 reporting guidelines and to consolidate these guidelines into a single reference document.

This document provides clarification and does not change the reporting requirements in 10 CFR 50.72 and 50.73. Therefore, the revised guidelines are not expected to result in a significant change in the industry-wide annual total number of ENS notifications or LERs.

The NRC is considering changes in reporting requirements, such as relaxation to reduce unnecessary reporting (e.g., certain ESF actuations), which will be pursued separately through the rulemaking process. Further guidelines in such areas will be provided in conjunction with the rulemaking.

The NRC staff is seeking public comment before finalizing the revised NUREG because of the broad interest in event reporting at nuclear power plants. The staff requests that comments be limited to the clarifications of the reporting requirements provided in this document, because the clarifications do not change the scope or intent of the reporting requirements in §§ 50.72 and 50.73. Any changes to §§ 50.72 or 50.73 will be pursued in separate rulemaking.

Organization of Comments—Commenters may submit proposed modified text for the NUREG that encompasses their comments, or conditions or events that exemplify their comments. To assist in producing

efficient and complete comment resolution, commenters are requested to reference the numbered section(s) in the Draft NUREG (for example, section 3.3.4) and page number(s) related to their comments, where possible.

Submittal of Comments in an Electronic Format—Commenters are encouraged to submit, in addition to the original paper copy, a copy of their comments in an electronic format on IBM PC DOS–compatible 3.5- or 5.25-inch, double-sided, diskettes. Data files should be provided in WordPerfect 5.0 or 5.1. ASCII code is also acceptable or, if formatted text is required, data files should be provided in IBM Revisable-Form Text Document Content Architecture (RFT/DCA) format.

Dated at Bethesda, Maryland, this 27th day of September, 1991.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Director, Division of Safety Programs, Office for Analysis and Evaluation of Operational Data.

[FR Doc. 91–24005 Filed 10–4–91; 8:45 am]

BILLING CODE 7590-01-M

Potential NRC Requirements Regarding a Uniform Low-Level Radioactive Waste Manifest; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will discuss its efforts to develop a uniform low-level radioactive waste manifest and the potential relevance of the manifest to the issue of determining the appropriate designation for radioactive material/waste being shipped offsite.

DATES: October 11, 1991.

ADDRESSES: Low-Level Waste Forum Meeting, Emerald Spring Inn, 325 East Flamingo Road, Las Vegas, NV 89109

FOR FURTHER INFORMATION CONTACT: William R. Lahs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–0569.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss NRC's proposed uniform low-level radioactive waste (LLW) manifest, in light of the Forum's efforts to provide guidance for consistent classification of shipments to processing facilities as either radioactive material or LLW. The manifest is being developed as a part of a proposed rulemaking on manifest information and reporting.

The NRC staff, at a session of the Low-Level Waste Forum meeting tentatively scheduled for the morning of October 11, 1991, will discuss the proposed manifest, the instructions for its completion, who would complete the manifest, and how the manifest tracks LLW from generation to disposal.

Persons other than NRC staff and LLW Forum members may observe the meeting. Registration will be conducted prior to the meeting and a meeting report will be issued.

Dated at Rockville, Maryland, this 30th day of September 1991.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 91–24004 Filed 10–4–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–369]

Duke Power Co.; McGuire Nuclear Station Unit 1

Exemption

I

Duke Power Company (the licensee) is the holder of Facility Operating License No. NPF–9 which authorizes operation of McGuire Nuclear Station, Unit 1. The license provides, among other things, that the licensee be subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consist of a pressurized water reactor at the licensee's site located in Mecklenburg County, North Carolina.

II

By letter dated April 18, 1991, the licensee requested an exemption to 10 CFR 50.46 that would enable the use of two demonstration assemblies during McGuire Unit 1 Cycles 8, 9, and 10. Subsequent to that request, the NRC staff determined that exemptions to appendix K to 10 CFR 50 and 10 CFR 50.44 were needed in addition to the 10 CFR 50.46 exemption. These regulations refer to pressurized water reactors fueled with uranium oxide pellets within cylindrical Zircaloy cladding. The two demonstration assemblies contain fuel rods with zirconium based claddings that are not chemically identical to Zircaloy.

Since 10 CFR 50.46 and appendix K identify requirements for calculating ECCS performance for reactors containing fuel with Zircaloy cladding, and 10 CFR 50.44 relates to the generation of hydrogen gas from a metal-water reactor with reactor fuel having Zircaloy cladding, an exemption is required to place the two demonstration assemblies containing fuel rods with advanced zirconium based claddings in the core.

III

10 CFR 50.12(a)(2)(ii) enables the Commission to grant an exemption from the requirements of Part 50 when special circumstances are present such that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and 10 CFR 50 Appendix K is to establish requirements for the calculation of ECCS performance. The licensee has performed a calculation demonstrating adequate ECCS performance for McGuire Unit 1 and has shown that the two demonstration assemblies do not have a significant impact on that previous calculation. As such, the licensee has achieved the underlying purpose of 10 CFR 50.46 and Appendix K. The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a postulated loss-of-coolant accident. The licensee has provided means for controlling hydrogen gas and has previously considered the potential for hydrogen gas generation stemming from a metal-water reaction. The small number of fuel rods in the two demonstration assemblies containing advanced zirconium based claddings in conjunction with the chemical similarity of the advanced claddings to Zircaloy ensures that previous calculations of hydrogen production resulting from a metal-water reactor would not be significantly changed. As such, the licensee has achieved the underlying purpose of 10 CFR 50.44.

The two demonstration assemblies that will be placed in the McGuire Unit 1 reactor during Cycles 8, 9, and 10 meet the same design bases as the fuel currently in the reactor. No safety limits or setpoints have been altered as result of the use of the two demonstration assemblies. The demonstration assemblies will be placed in core locations that will not experience limiting power peaking during Cycles 8, 9, or 10. The advanced claddings have been tested for corrosion resistance, tensile and burst strength, and creep characteristics. The results indicate that the advanced claddings are safe for reactor service.

IV

For the foregoing reasons, the NRC staff has concluded that the use of the two demonstration assemblies in the McGuire Unit 1 reactor during Cycles 8, 9, and 10 will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present as specified in 10 CFR 50.12(a)(2) such that application of 10 CFR 50.46, 10 CFR 50 appendix K, and 10 CFR 50.44 to explicitly consider the advanced clad fuel rods present within the two demonstration assemblies is not necessary in order to achieve the underlying purpose of these regulations.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest, and hereby grants Duke Power Company an exemption from the requirements of 10 CFR 50.46, 10 CFR 50 appendix K, and 10 CFR 50.44 in that explicit consideration of the advanced zirconium based clad fuel present within the two demonstration assemblies is not required in order to be in compliance with these regulations. This exemption applies only to the two demonstration assemblies for the time period (Cycle 8, 9, and 10) for which these assemblies will be in the McGuire Unit 1 reactor core.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (56 FR 48217).

For further information regarding this action, see the licensee's submittal dated April 18, 1991, which is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-24002 Filed 10-4-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Notice of Denial of Portion of Application for Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by Florida Power and Light Company (licensee) for amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to the licensee for operation of the Turkey Point Plant, Unit Nos. 3 and 4, located in Dade County, Florida. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on July 10, 1991 (56 FR 31434).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) by (1) removing outdated material, (2) incorporating administrative changes, and (3) correcting typographical errors.

The NRC staff has concluded that two requested changes cannot be granted. The licensee was notified of the Commission's denial to the two proposed changes by letter dated September 25, 1991.

By November 5, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esq., Newman and Holtzer, P.C., 1615 L Street, NW, Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated May 28, 1991, and (2) the Commission's letter to the licensee dated September 25, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 25th day of September 1991.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Director, Project Directorate II/2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-24003 Filed 10-4-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29747; File No. SR-CBOE-91-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Membership Application and Other Membership Fees

September 27, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1991, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issue a Regulatory Circular ("Circular") to apprise its membership that the Exchange has reduced the membership fee for Executive Officers and General Partners of member firms and applicants from $1,000 per person to $250 per person. It also clarifies that membership fees for certain persons associated with member organizations (*i.e.*, general partners, executive officers, principal shareholders, and limited partners) are assessed not only when an initial application is filed, but also whenever additional individuals of such status are added to the member organization. The CBOE represents that this is consistent with the current stated policy and practice of the Exchange. The title of the Circular has also been changed slightly

to reflect the fact that not all of the fees contained therein are assessed in connection with the initial membership application process.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Circular contains several changes from the previously issued circular dealing with membership application fees. The primary change is the reduction of the basic fee assessed by the Exchange for each General Partner and Executive Officer from $1,000 to $250 per person. The Exchange determined that the reduction in the fee was warranted because the current fee was proving to be burdensome for some members and applicants for membership.

The Circular also contains language which indicates that investigations are conducted and fees are assessed each time a general partner, executive officer, principal shareholder, or limited partner is added to a member firm, as well as at the time the application is filed. This change is designed to clarify what is already the stated policy and practice of the Exchange with respect to the investigation of persons associated with member firms and with respect to the assessment of fees for such persons. Since not all of the fees are assessed in connection with the initial membership application process, the title of the Circular has also been changed to more accurately reflect the nature of the fees described therein.

Finally, the amount of the Orientation Fee listed on the Circular has been changed and the Inactive Nominee Status Change Fee has been added. These changes were both the subject of prior rule filings by the CBOE.[1]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular, which section requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposed Circular is consistent with section 6(c)(3) of the Act, which section authorizes the Exchange to examine and verify the qualification of an applicant to become a member and the natural persons associated with such applicant in accordance with procedures established by the rules of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal changes the fees and other charges imposed by the CBOE with respect to Membership Applications and Other Membership Registration requirements. With respect to the language added to the Circular that indicates that investigations are conducted and fees are assessed each time a new person of the designated status is added to a member firm, this addition clarifies what is already the stated policy and practice of the Exchange. Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the date of filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24066 Filed 10–4–91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 30, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Amax Gold Inc./Amax Inc.
  Units (1 Share Common Stock of Amax Gold Ind. & 1 Warrant to Purchase 1 Share of Common Stock of Amax Gold Inc.) (File No. 7–7294)

Blackstone Municipal Target Term Trust Inc.
  Common Stock, $0.01 Par Value (File No. 7–7295)

Damon Corp.
  Common Stock, $0.01 Par Value (File No. 7–7296)

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[1] See Securities Exchange Release Nos. 28158 (June 28, 1990), 55 FR 27732 (July 5, 1990) (notice of filing and immediate effectiveness of SR–CBOE–90–15), and 29482 (July 24, 1991), 56 FR 36180 (notice of filing and immediate effectiveness of SR–CBOE–91–27).

[2] 17 CFR 200.30–3 (a)(12) (1990).

He-Ro Group Ltd.
Common Stock, $0.01 Par Value (File No. 7-7297)
Hi-Lo Automatic Inc.
Common Stock, $0.01 Par Value (File No. 7-7298)
Mellon Bank Corp.
Series 1 Preferred $1.00 Par Value (File No. 7-7299)
Minnesota Municipal Term Trust Inc.
Common Stock, $0.01 Par Value (File No. 7-7300)
National Westminster Bank plc
American Depository Shares (Representing Dollar Pref. Shares, Series A) (File No. 7-7301)
York International Corp.
Common Stock, $0.01 Par Value (File No. 7-7302)
PS Business Parks, Inc.
Common Stock, Series A $0.01 Par Value (File No. 7-7303)
Veterinary Centers of America, Inc.
Common Stock, $0.001 Par Value (File No. 7-7304)
American Municipal Term Trust, Inc. II
Common Stock, $0.01 Par Value (File No. 7-7305)
Barnett Banks, Inc.
Series C Cum. Conv. Pfd. $0.10 Par Value (File No. 7-7306)
Berkshire Realty Inc.
Common Stock, $0.01 Par Value (File No. 7-7307)
General Physics Corp.
Common Stock, $0.025 Par Value (File No. 7-7308)
Nuveen Insured Municipal Opportunity Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7309)
Smucker (J.M.) Co.
Class B Common Stock, No Par Value (File No. 7-7310)
Southern National Corp.
Common Stock, $5.00 Par Value (File No. 7-7311)
Maxum Health Corp.
Common Stock, $0.01 Par Value (File No. 7-7312)
The Money Store, Inc.
Common Stock, No Par Value (File No. 7-7313)
The Ziegler Company
Common Stock, $1.00 Par Value (File No. 7-7314)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 22, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24028 Filed 10-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29751; File Nos. 600-19 and 600-22]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Accelerate Approval of Amended Application for Extension of Temporary Registration as a Clearing Agency

September 27, 1991.

On February 2, 1987, the Securities and Exchange Commission ("Commission") granted the application of MBS Clearing Corporation ("MBSCC") for registration as a clearing agency, pursuant to sections 17A(b) and 19(a)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 17Ab2-1(c) [2] thereunder, on a temporary basis for a period of 18 months.[3] Subsequently, the Commission issued orders that extended MBSCC's temporary registration as a clearing agency, the last of which orders extended MBSCC's registration through September 30, 1991.[4]

On September 4, 1991, MBSCC filed an amendment to its application for registration as a clearing agency and requested an extension of its registration for 12 months.[5] Notice of MBSCC's amended application and request for 12 month extension of its temporary registration appeared in the **Federal Register** on September 13, 1991.[6]

As discussed in detail in the original order granting MBSCC's registration, one of the primary reasons for MBSCC's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities.[7] MBSCC continues to revise its system and procedures to enhance the safety and efficiency of its operation. For example, over the past 12 months, MBSCC has implemented rules changes that would provide it with increased sources of liquidity to fund end-of-day settlement in the event of participant default.[8] MBSCC also has accelerated the deadline by which all dealer participants must submit dealer trade input.[9] MBSCC, however, is still in the process of establishing an off-site disaster recovery facility. MBSCC expects to have such a facility operational in 1992.

MBSCC has functioned effectively as a registered clearing agency for over four years. Accordingly, in light of the past performance of MBSCC, including the ongoing improvements to its operating and financial standards, as well as the need for MBSCC to provide continuity of service to its participants, the Commission believes that "good cause" exists, pursuant to section 19(b)(2) of the Act,[10] for extending MBSCC's registration for an additional 12 months and for doing so before the expiration of the comment period on such extension.[11] Any comments received concerning MBSCC's amended application will be considered in conjunction with the Commission's consideration of whether to grant MBSCC permanent registration as a clearing agency under section 17A(b) of the Act.[12]

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[1] 15 U.S.C. 78q-1(b) and 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.17Ab2-1(c).

[3] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218 (Order granting MBSCC registration as a clearing agency for a period not to exceed 18 months).

[4] Securities Exchange Act Release Nos. 25957, 27079, and 28492 (August 2, 1988; July 31, 1989; and September 28, 1990), 53 FR 29537, 54 FR 32412, and 55 FR 41148.

[5] Letter from J. Craig Long, General Counsel, MBSCC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated September 4, 1991.

[6] Securities Exchange Act Release No. 29657 (September 6, 1991), 56 FR 46657.

[7] *Supra*, note 3.

[8] Securities Exchange Act Release Nos. 28806 and 28991 (January 22, 1991 and March 20, 1991), 56 FR 3129 and 56 FR 12961.

[9] Securities Exchange Act Release No. 28649 (November 28, 1990), 55 FR 50259.

[10] 15 U.S.C. 78s(b)(2).

[11] Before the end of the next 12 months, the Commission expects to consider whether to grant MBSCC permanent registration as a clearing agency. In advance of taking any such action, the Commission will solicit comments and will consider any such comments it may receive from interested persons.

[12] 15 U.S.C. 78q-1(b).

It is therefore ordered, that MBSCC's registration as a clearing agency be, and hereby is, approved on a temporary basis until September 30, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24065 Filed 10-4-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

October 1, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 122f-1 thereunder for unlisted trading privileges in the following securities:

ATI Medical, Inc.
Common Stock, No Par Value (File No. 7-7315)
COM Systems, Inc.
Common Stock, No Par Value (File No. 7-7316)
Ecology & Entertainment, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-7317)
Frisch's Restaurants, Inc.
Common Stock, No Par Value (File No. 7-7318)
Genovese Drug Store, Inc.
Class A Common Stock, $1.00 Par Value (File No. 7-7319)
Greiner Engineering, Inc.
Common Stock, $.50 Par Value (File No. 7-7320)
General Physics Corporation
Common Stock, $.005 Par Value (File No. 7-7321)
INCSTAR Corporation
Common Stock, $.01 Par Value (File No. 7-7322)
K-Mart Corporation
$3.41 Depositary Shares, each representing ¼ share of Series A Convertible Preferred Stock (File No. 7-7323)
Professional Care, Inc.
Common Stock, $.02 Par Value (File No. 7-7324)
Perini Corporation
Common Stock, $1.00 Par Value (File No. 7-7325)
Redwood Empire Bancorp
Common Stock, No Par Value (File No. 7-7326)
RYMAC Mortgage Investment Corporation
Common Stock, $.01 Par Value (File No. 7-7327)
Residential Mortgage Investments, Inc.
Common Stock, $.01 Par Value (File No. 7-7328)
Riser Foods, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-7329)
Selas Corporation of America
Common Stock, $1.00 Par Value (File No. 7-7330)
Stevens Graphics Corporation
Class A Common Stock, $.10 Par Value (File No. 7-7331)
Synalloy Corporation
Common Stock, $1.00 Par Value (File No. 7-7332)
Team, Incorporated
Common Stock, $.30 Par Value (File No. 7-7333)
Thermo Process systems, Inc.
Common Stock, $.10 Par Value (File No. 7-7334)
Tejon Ranch Company
Common Stock, $.50 Par Value (File No. 7-7335)
Unimar Indonesian PTC
Units, No Par Value (File No. 7-7336)
Viatech, Incorporated
Common Stock, $.25 Par Value (File No. 7-7337)
Bairnco Corporation
Common Stock, $.05 Par Value (File No. 7-7338)
Elsinore Corporation
Common Stock, $.01 Par Value (File No. 7-7339)
NFC Public Limited Company
American Depositary Receipts, each representing five Ordinary Shares (File No. 7-7340)
Royal Oak Mines, Inc.
Common Stock, $.01 Par Value (File No. 7-7341)
United Merchants and Manufacturers, Inc.
Common Stock, $1.00 Par Value (File No. 7-7342)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 23, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24067 Filed 10-4-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (BioTechnica International, Inc., Common Stock, $.01 Par Value) File No. 1-8710

October 1, 1991.

BioTechnica International, Inc. ("Company") has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock currently trades on the BSE and also is traded in the over-the-counter market on the National Association of Securities Dealers Automated Quotation system/National Market System ("NASDAQ"/"NMS").

In making the decision to withdraw its Stock from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NASDAQ/NMS and the BSE. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock. Additionally, the Company believes that the NASDAQ/NMS provides the Company's stockholders with a market system that readily accommodates the trading volume in the Company's Common Stock.

Any interested person may, on or before October 23, 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 exchanges and what terms, if any, should be imposed by the Commission for the protection of

[13] 17 CFR 200.30-3(a)(50).

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. 91-24064 Filed 10-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18337; 812-7774]

General Cinema Corp.; Notice of Application

October 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANT: General Cinema Corporation ("General Cinema" or the "Company").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) that would grant an exemption from all provisions of the Act, subject to certain exceptions.

SUMMARY OF APPLICATION: Applicant seeks a conditional order that would amend a prior order exempting applicant from all provisions of the Act except sections 9, 36, 37 and, subject to certain exceptions, sections 17(a), 17(d), 17(e), and 17(f). The requested order would extend the period of exemption afforded by the prior order until the earlier of September 30, 1992 or the date that the Company could no longer be considered an "investment company" under the Act.

FILING DATE: The application was filed on August 16, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 23, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicant, General Cinema Corporation, 27 Boylston Street, Chestnut Hill, Massachusetts 02167.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272-3035, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was founded in 1922 as a motion picture exhibition business. It was incorporated in the State of Delaware in 1950 as the successor to a Massachusetts corporation organized in 1937 for the purpose of acquiring additional theater locations. As of April 30, 1991, approximately 7.6% of applicant's assets were devoted to its theater operations.

2. Since 1968, applicant has expanded its theater exhibition operations to other consumer-oriented businesses. Currently, applicant's major operating business is specialty retailing, which applicant conducts through its controlling interest in The Neiman Marcus Group, Inc. ("NMG"). Applicant acquired its NMG securities in August 1987 during the reorganization of Carter Hawley Hale Stores, Inc., in which applicant had maintained an investment since 1984. As of April 30, 1991, NMG's operations accounted for approximately $1.2 billion or 37.6% of applicant's assets. For the two quarters ended April 30, 1991, approximately $22.2 million or 39.6% of applicant's net income was attributable to NMG.

3. Between 1968 and 1989, applicant engaged in the soft drink bottling business, ultimately operating the nation's largest independent bottling network for Pepsi-Cola and Dr. Depper. On March 23, 1989, applicant sold its soft drink bottling business to PepsiCo, Inc. for $1.77 billion in cash (the "PepsiCo Sale"). The decision to sell the bottling business was essentially the result of a change in the soft drink bottling industry. The PepsiCo Sale produced after-tax proceeds of $1.2 billion in cash. Applicant invested the majority of the proceeds from the PepsiCo Sale in short-term investments, including obligations of the U.S. Government and its agencies and instrumentalities, repurchase agreements collateralized by such obligations, obligations of foreign and domestic banks, commercial paper, tax-exempt paper, short-term corporate debt, floating rate notes, and auction rate preferred stock. Applicant intends to invest these assets in one or more operating businesses.

4. On October 9, 1990, applicant sold $592.5 million worth of its holdings ($547.2 million on an after-tax basis) of the outstanding stock of Cadbury Schweppes plc ("Cadbury"), and invested the proceeds in short-term securities. Applicant retained approximately 2.0% of Cadbury's outstanding stock, which had a value of approximately $52.5 million as of April 30, 1991.

5. Applicant maintains approximately $2.95 million (representing less than one percent of its assets) in certain other investments, including interests in three limited partnerships organized by the same general partner (Boston Ventures Limited Partnership), and common stock in an insurance company organized and operated for the purpose of providing insurance coverage to applicant and other businesses.

6. On January 24, 1991, applicant announced its offer to acquire Harcourt Brace Jovanovich, Inc. ("HBJ"), the publishing and insurance concern. For the acquisition to be completed, at least 90% of each class of HBJ's bondholders had to agree to applicant's tender offer. Applicant extended the tender offer deadline several times while negotiating with HBJ's bondholders, but ultimately was unable to obtain the required 90% acceptance. Falling short of the required commitment, applicant withdrew its tender offer on April 26, 1991. On August 22, 1991, applicant and HBJ agreed to a revised plan of merger. The revised merger plan has been approved by the boards of directors of each company subject to the execution of a definitive agreement, the approval of HBJ's and General Cinema's stockholders, and certain regulatory approvals. Applicant hopes to acquire HBJ pursuant to the revised plan of merger within the next few months.

Applicant's Legal Analysis

1. After the PepsiCo Sale, applicant relied on the safe harbor provided by rule 3a-2 under the Act. Rule 3a-2 generally provides that, for purposes of section 3(a)(3) of the Act, an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding, or trading in securities for a period not exceeding one year if the issuer has a *bona fide* intent to be engaged in a non-investment company business. Section 3(a)(3) of the Act

defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." The one-year period under rule 3a-2 expired on March 23, 1990, which necessitated the filing of an application for exemption. In Investment Company Act Release No. 18021 (Feb. 27, 1991) (the "Prior Order"), the Commission exempted applicant from all but certain provisions of the Act until the earlier of September 30, 1991 or the date that applicant no longer could be considered an investment company.

2. As of April 30, 1991, applicant's balance sheet (attached as an exhibit to the application) reflects total assets of $3,114,898,000 (which includes assets attributable to NMG's operations). Of this amount, short-term investments account for $1,603,847,000 or 51.49% of applicant's total assets. In addition, the balance sheet reflects $52,475,000 in Cadbury stock, representing an additional 1.68% of total assets. Applicant thus holds investment securities having a value exceeding 40% of its total assets. Accordingly, pursuant to section 3(a)(3), applicant would be deemed an investment company.

3. In the application for the Prior Order, applicant argued that its holdings of NMG securities should not be treated as "investment securities" under section 3(a)(3) because NMG qualified as a controlled company of applicant. In the current application, applicant acknowledges that its NMG securities appear to be "investment securities," but notes that if NMG makes its next regularly scheduled dividend payment on October 31, 1991, applicant will own in excess of 50% of NMG's voting stock. At that time, NMG would be deemed a majority-owned subsidiary of applicant under section 2(a)(24) of the Act, and under section 3(a)(3) of the Act, applicant's holdings of NMG stock would not be regarded as "investment securities."

4. Applicant believes that the issuance of an amended order exempting it until the earlier of September 30, 1992 or the date that it no longer could be considered an investment company would be in the public interest and consistent with the protection of investors and the purposes of the Act. Applicant acknowledges that, pursuant to section 6(e), the provisions of the Act imposed on it by the amended order would apply to applicant and to other persons in their transactions and relations with applicant as if applicant were a registered investment company.

5. Applicant submits that if the requested relief were denied, it would be forced either to invest a substantial amount of its short-term assets in U.S. Government securities (so that it could meet the 40% test set forth in section 3(a)(3)), or to comply with the provisions of the Act. The first alternative would require applicant to forego the more attractive yields available currently on the majority of its short-term holdings. The second alternative would result in expensive and burdensome regulation, and require changes in applicant's business that would not necessarily benefit shareholders.

6. In determining whether to grant exemptive relief beyond the one-year period prescribed by rule 3a–2, the Commission examines factors such as: (a) Whether the failure of applicant to become primarily engaged in a non-investment business or excepted business or to liquidate within one year was due to factors beyond its control; (b) whether applicant's officers and employees during that period tried, in good faith, to invest applicant's assets in a non-investment business or excepted business or to cause the liquidation of applicant; and (c) whether applicant invested in securities solely to preserve the value of its assets. Applicant contends that it satisfies each of these criteria for the reasons indicated below.

7. Following the PepsiCo Sale, applicant formed a Mergers and Acquisition Group to accomplish its objective of investing its substantial short-term holdings in one or more new businesses. The Mergers and Acquisition Group, which is composed primarily of the Company's most senior executive officers, has devoted substantial amounts of time, energy, and resources toward the identification and evaluation of potential acquisition candidates.

8. Applicant argues that its failure to acquire HBJ before the Prior Order expired was attributable to actions of third parties (*i.e.*, the HBJ bondholders) that it could not control. Applicant argues that the Commission should extend the term of the Prior Order because applicant has made, and continues to make, diligent efforts to consummate its acquisition of HBJ. Applicant also represents that the additional securities it has acquired since the issuance of the Prior Order meet the Order's quality standards. Those quality standards also would be a condition to the amended order.

Applicant's Conditions

The Company agrees that the following conditions may be imposed in any order of the Commission granting the relief requested in the application:

1. During the period of time the Company is exempted from registration under the Act, General Cinema will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by General Cinema's Board of Directors, except that: (i) General Cinema may, without limitation, make additional investments in NMG; and (ii) General Cinema may make equity investments in issuers that are not investment companies, as defined in section 3(a) of the Act (unless such issuer is covered by a specific exclusion from the definition of investment company under section 3(c) other than section 3(c)(1)), in the following circumstances: (a) in connection with the consideration of the possible acquisition of an operating business as evidenced by a resolution approved by General Cinema's Board of Directors and (b) in connection with the acquisition of majority-owned subsidiaries.

2. General Cinema will continue to allocate and utilize its accumulated cash and short-term securities for the *bona fide* purposes of funding cash requirements for its existing businesses and/or acquiring one or more new businesses. General Cinema will not invest or trade in securities for short-term speculative purposes.

3. General Cinema will comply with sections 9, 17(a), 17(d), 17(e), 17(f), 36, and 37 of the Act and the rules and regulations thereunder as if it were a registered investment company under the Act, provided, however, that: (i) For purposes of sections 17(a), 17(d), and 17(e), the definition of an affiliated person shall not include any employee who is not also an executive officer or director of General Cinema or NMG, any co-partner of an executive officer or director of General Cinema or NMG, provided such executive officer or director owns less than 5% of the partnership, or any co-partner of General Cinema arising from its investment in the limited partnerships described in the application; (ii) the provisions of sections 17(a) and 17(d) [1]

[1] In determining the applicability of sections 17(a) and 17(d) and for purposes of determining a

Continued

shall not apply to (a) General Cinema's employee benefit plans as described in its proxy statement dated January 30, 1990 (and substantially similar plans, including amendments to existing plans, as described in future proxy statements); (b) transactions between General Cinema and NMG; (c) transactions with an affiliated person (by reason of ownership of securities in such person) which are effected by General Cinema (or NMG) for the purpose of acquiring such person; (d) transactions arising in the ordinary course of business of General Cinema or NMG which are on terms and under circumstances that are substantially the same or at least as favorable to General Cinema or NMG as those prevailing at the time for comparable transactions with or involving persons who are not affiliated persons of General Cinema or NMG within the meaning of section 2(a)(3) of the Act provided that, with the exception of the procurement of insurance from Liberty Mutual Insurance Company as described in the application, the transaction does not involve more than $100,000 on an annual basis and, for such transactions involving more than $100,000 on an annual basis (as more particularly described in the application), the transaction is approved by a required majority (as defined in section 57(o) of the Act) of the directors of General Cinema or NMG in accordance with section 57(f) of the Act; and (e) any transaction by an affiliated person (other than by reason of section 2(a)(3)(C) of the Act) of a director, executive officer, or member of an advisory board of General Cinema or NMG, or by an affiliated person (other than by reason of section 2(a)(3)(C) of the Act) of any person controlled by or under common control with General Cinema or NMG, that is approved by a required majority (as defined in section 57(o) of the Act) of the directors of General Cinema or NMG in accordance with section 57(f) of the Act; (iii) the provisions of section 17(e)(1) shall not apply to the occasional receipt of travel, entertainment, holiday gifts, and the like from third parties pursuant to established policies of General Cinema or NMG; and (iv) the provisions of section 17(f) shall not apply to General Cinema's NMG and Cadbury Schweppes holdings and its investments in the limited partnerships, insurance company, and theaters described in the application.

"required majority" under section 57(o) of the Act as provided in subsections (d) and (e) below, the provisions of section 57(m) of the Act shall apply.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24027 Filed 10-4-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-35]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received; reopening of comment period.

SUMMARY: Pursuant to the FAA's rulemaking provisions government the processing of petitions for exemption (14 CFR part 11), this notice reopens the comment period for the petition for exemption for Geotech International, Ltd. and The Mil Design. The purpose of this notice is to give all interested persons the opportunity for participation in this aspect of the FAA's rulemaking process. The publication of this notice will not affect either the legal status nor the final disposition of the petition.

DATES: Comments on this petition for exemption must identify Docket Number 26624 and must be received on or before October 28, 1991.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, ATTN: Rules Docket (AGC-10), Docket No. 26624, 800 Independence Ave., SW., Washington, DC 20591: telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-9683.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1991, a summary of the petition of Geotech International, Ltd. and The Mil Design Bureau was published in the **Federal Register** for comment; the comment period closed September 18, 1991.

Subsequent to that publication, the FAA received a number of requests to reopen the comment period. A reopening of the comment period will not be detrimental to the petitioner since the processing of the petition will subsume that amount of time. Therefore, the FAA has determined that interested parties should be afforded the opportunity to comment on the petition. Thus, the comment period for this petition for exemption is reopened for an additional 20 day period.

Summary of the Petition for Exemption

Docket No: 26624

Petitioner: Geotech International, Ltd. and The Mil Design Bureau

Description of Relief Sought: To allow the petitioners to conduct external load rotorcraft operations within the United States with Soviet registered MI-26 rotorcraft operated by Soviet licensed crews.

Issued in Washington, DC, on September 26, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

[FR Doc. 91-24049 Filed 10-4-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 29-91]

Treasury Notes, Series AF-1993; Interest Rate

Washington, September 25, 1991.

The Secretary announced on September 24, 1991, that the interest rate on the notes designated Series AF-1993, described in Department Circular—Public Debt Series—No. 29-91 dated September 19, 1991, will be 6⅛ percent. Interest on the notes will be payable at the rate of 6⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-24077 Filed 10-4-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 30-91]

Treasury Notes, Series T-1996; Interest Rate

Washington, September 26, 1991.

The Secretary announced on September 25, 1991, that the interest rate on the notes designated Series T-1996, described in Department Circular—Public Debt Series—No. 30-91 dated September 19, 1991, will be 7 percent.

Interest on the notes will be payable at the rate of 7 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-24078 Filed 10-4-91; 8:45 am]

BILLING CODE 4810-40-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC, on October 29 and October 30, 1991, of the following debt management advisory committee:

Public Securities Association Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on October 29 and the preparation of a written report to the Secretary of the Treasury on October 30, 1991.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552(b)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: September 28, 1991.

Jerome H. Powell,

Assistant Secretary (Domestic Finance).

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Comptroller of the Currency

[Docket No. 91-12]

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives regarding differences in capital and accounting standards among the federal banking and thrift agencies.

SUMMARY: This report has been prepared by the Office of the Comptroller of the Currency (OCC) pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Section 1215 requires each federal banking agency to report annually to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives any differences between the capital standards used by the OCC and the capital standards used by the other financial institutions supervisory agencies. The report must contain an explanation of the reasons for any discrepancy in capital standards and must be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Donna Duncan, National Bank Examiner, Office of the Chief National Bank Examiner, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, (202) 874-5070.

INTERAGENCY DIFFERENCES IN CAPITAL STANDARDS

This annual report details the differences in the capital requirements applied by the Office of the Comptroller of the Currency (OCC) and the other bank and thrift regulatory agencies. Representatives of the OCC, Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) meet frequently to ensure consistent interpretation and application of the guidelines. Furthermore, our efforts to eliminate differences in the current capital standards continue.

The capital standards report is divided into two sections. The first section focuses on areas where differences exist between the four agencies. The second section points out areas where rules for banks are the same but the rules for thrifts are different.

I. Differences Between the Federal Financial Institutions Regulators

The banking agencies employ uniform capital ratios and consistent capital frameworks. Financial institutions regulated by each of the three banking regulators were required to begin measuring their capital adequacy using risk-based capital guidelines effective December 31, 1990. The OCC and FRB also implemented their leverage ratio rules at that time. The FDIC's leverage ratio rule became effective April 10, 1991. Only minor differences in the agencies' regulations exist and they are detailed below.

A. Goodwill

The banking agencies' guidelines, which were published before the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) was enacted, require the deduction of all goodwill. The only exception to this requirement was supervisory goodwill if approved by the bank's primary regulator. However, section 221 of FIRREA, 12 U.S.C. 1828(n), specifically forbids the inclusion of any unidentifiable intangible asset, i.e., goodwill, for federal banking institutions, and requires thrift institutions to phase out its

incorporation in core capital through December 31, 1994. On October 17, 1990, the OCC issued a proposed rule to delete the provision allowing supervisory goodwill and to make other technical amendments to the risk-based capital guidelines. The rule is currently being finalized and is expected to be in effect before year end, 1991. The FRB and FDIC have made technical amendments to their respective guidelines to disallow supervisory goodwill.

B. Intangible Assets

As a general rule, the OCC requires the deduction of all intangible assets from Tier 1 capital. The exceptions to this rule are as follows:

a. Any intangible asset that, in the OCC's opinion, satisfies a three-part test does not have to be deducted (subject to the limitation described below). The criteria an intangible asset must meet for this test are: (1) It must be able to be separated and sold apart from the bank or from the bulk of the bank's assets; (2) its market value must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the bank; and (3) the bank must demonstrate that a market exists that will provide liquidity for the intangible asset.

Purchased mortgage servicing rights (PMSR) currently represent the only intangible assets that the OCC presumes will meet this test. Furthermore, qualifying intangible assets, specifically PMSR, are limited to 25% of Tier 1 capital. Any amount in excess of this limit must be deducted from Tier 1 capital unless the bank requests and receives approval from the OCC to exceed this limitation.

Recent events in the industry, as well as the enactment of FIRREA, have led some national banks to express the belief that the 25% limit on PMSR is too stringent. They also have suggested that other intangibles should be considered qualifying intangibles. In an effort to develop additional information on this issue, the OCC published an advance notice of proposed rulemaking (ANPR) on October 4, 1990, requesting comment on several issues regarding intangible assets.

The OCC received in excess of 130 comments in response to this ANPR. Most commenters expressed the belief that the limitations on identifiable intangible assets are too stringent. Also, many commenters expressed the opinion that other intangibles meet the criteria for qualifying intangibles. In response to the comments received, the OCC is reexamining the capital treatment of PMSR and other identifiable intangibles to determine whether there are more appropriate methods to ensure that national banks maintain sufficient capital.

Under the transitional risk-based capital rules that apply until December 31, 1992, national banks are allowed to classify "grandfathered intangibles" as qualifying intangibles, subject to the 25 % limit, in aggregation with the bank's other qualifying intangibles, if any. This is because the OCC had a grandfathering provision in its 1985 capital rules permitting national banks to continue including previously qualifying intangibles. This transitional treatment of the pre-1985 intangibles will be permitted until the risk-based capital guidelines become fully effective on December 31, 1992.

The FRB's capital guidelines for banks contain the same three-part test as the OCC's. However, rather than placing a set 25% limit on qualifying intangibles, as the OCC does, the FRB states that qualifying intangibles in excess of 25% of Tier 1 capital are subject to special scrutiny.

The FDIC's capital guidelines require the deduction of all intangible assets from Tier 1 capital, except:

a. PMSR. Although the FDIC's risk-based capital guidelines originally did not place an explicit limit on PMSR, it has subsequently implemented a 50% Tier 1 capital limitation for state nonmember banks, as well as a 10% of fair market value "haircut." The haircut limits the amount that can be recognized for purposes of capital to 90% of the fair market value of readily marketable purchased mortgage servicing rights. The FDIC's rule also established certain accounting criteria, valuation requirements, and a grandfathering provision for PMSR. Another provision of its regulation allows for nonmember banks and savings associations to establish separately capitalized subsidiaries for holding PMSR that are not subject to the capital limitations.

b. Any other intangible asset that is specifically approved by the FDIC on a case-by-case basis. The FDIC's guidelines state that the same criteria used by the OCC and the FRB will be used to make these case-by-case determinations.

The capital rules for savings associations do not require the deduction of the following intangible assets:

a. PMSR, subject to the 10% of fair market value haircut imposed by FIRREA. However, FIRREA requires savings associations to comply with the FDIC's capital treatment of PMSR. Under the FDIC's rules, savings associations are further limited in their holdings of PMSR to 100% of tangible capital and 50% of core capital.

b. Any other intangible asset that is determined to meet the three-part test used by the banking agencies, subject to a 25% core capital limitation.

The OTS has issued temporary guidance stating that core deposit intangibles can be considered a qualifying intangible if management prepares the appropriate documentation relative to the three-part test. The OTS has not published any guidance relative to the ability of other intangible assets to meet the test.

C. Mortgage-Backed Securities

The banking agencies assign all privately issued mortgage-backed securities to the 50% or 100% risk-weight category, except those composed of, or collateralized by, government agency, or agency-sponsored, securities, which receive a 20% risk-weight. The OTS allows certain high quality privately-issued mortgage-backed securities (AAA or AA-rated plus other requirements), in addition to those collateralized by obligations of government agencies, to receive a 20% risk-weight.

The OCC's risk-based capital guidelines require that any mortgage-backed security capable of absorbing more than its *pro rata* share of principal loss, as well as all stripped mortgage-backed securities, be risk-weighted at 100%.

The FRB's and FDIC's guidelines contain language similar to the OCC's except that the word "principal" is not included. This gives the FRB and FDIC latitude in defining what constitutes a class with high levels of risk by taking interest rate risk, as well as credit risk, to consideration.

The OTS has issued a Thrift Bulletin identifying classes of collateralized mortgage obligations (CMOs) that is places in the 100% risk-weight category. The OTS has also indicated a preference to deal with the issue through an explicit interest rate risk component in the risk-based capital rule (see infra).

D. Treatment of Junior Liens on One-to-Four Family Properties

While the OCC generally assigns a risk-weight of 50% to first liens on one-to-four family property, all second liens on residential property are assigned a risk-weight of 100%, regardless of whether the institution also holds the first lien. The assignment of mortgages to the 50% risk category is based upon

the presumption that banks will adhere to prudent underwriting standards with respect to the maximum loan-to-value ratio, the borrower's paying capacity and the long-term expectations for the real estate market in which it is lending. The OTS has adopted the same approach as the OCC's.

The FRB's and FDIC's guidelines state that two transactions secured by consecutive liens on the same property are to be viewed as a single loan for the purpose of determining whether a prudent loan-to-value is retained. If the two loans combined exceed a prudent loan-to-value ratio, both agencies would place the asset in the 100% risk-weight category. If both loans combined are within prudent underwriting standards, the FRB generally will place the asset in the 50% risk-weight category. The FDIC, under the circumstances, generally places the loan secured by the first lien in the 50% category, and the loan secured by the second lien in the 100% category.

Although there are some technical differences in the methodology, all the agencies have the same ability to adjust an individual bank's capital requirement to account for imprudent loans secured by first liens on one-to-four family properties.

E. The Leverage Ratio

In addition to the risk-based capital requirements, all three banking regulators have in place similar regulations establishing a minimum 3% Tier 1 capital to total balance sheet assets ratio, which is known as a leverage ratio. Only those banks which are well-managed institutions, assume no undue risks, are rated 1 under the CAMEL rating system, and meet certain other criteria will be allowed to operate at or near the minimum. All other banks are required to maintain an additional cushion of 100 to 200 basis points over the 3% requirement.

While the effects of each banking agency's leverage ratio rules are essentially the same, some technical differences in language are present. For example, the FDIC's rules set an absolute minimum of 4% for all but the most highly rated banks it supervises.

OTS is in process of finalizing its leverage ratio rules to conform with those of the banking regulatory agencies.

II. Differences Between the OTS and the Banking Agencies

The three banking agencies have uniform positions on the following issues. The identified differences between the banking agencies and OTs have been subdivided into three categories, based on the primary reason for the difference.

1. Differences in the Guidelines

FIRREA requires that the capital requirements applicable to thrifts shall be no less stringent than the standards applicable to national banks. However, it also provides that the risk-based capital standards for thrifts may deviate from those of national banks to reflect interest rate risk or other risks. The following are areas where there are differences.

A. Interest Rate Risk

Because the risk-based capital ratio is based on broad measures of relative credit risk, all three of the banking agencies' risk-based capital guidelines specifically discuss the importance of incorporating noncredit risks, including interest rate risk, into the assessment of capital adequacy. The U.S. banking agencies are working together, as well as participating in an international effort, to develop methodologies to quantify the risks associated with changes in interest rates, equity investments, and foreign exchange activities which will supplement the original risk-based capital framework.

FIRREA explicitly gives the OTS the latitude to incorporate an explicit charge for interest rate risk in its risk-based capital ratio. Accordingly, the OTS has published a proposal to modify its risk-based capital requirement to incorporate an explicit charge for interest rate risk, in addition to credit risk.

B. Recourse Arrangements

Under the banking agencies' risk-based capital guidelines, the same amount of capital must be held against an asset that a bank originates and sells with recourse, regardless of whether it is accounted for as a sale (off-balance sheet) or a financing transaction (on-balance sheet). The determination of sale versus financing treatment is generally based on the regulatory reporting rules specified in the Consolidated Reports of Condition and Income Instructions. There are some differences between the thrift and bank regulatory reporting treatment of these transactions, but they generally do not result in a different risk-based capital requirement due to the consistent treatment of on- and off-balance sheet exposures. This issue is further discussed in the following section on interagency accounting differences.

However, the regulatory reporting differences to generate a variation in the leverage ratio requirement. For purposes of calculating the leverage ratio, capital must be held against on-balance sheet assets, but not on off-balance sheet exposures. The thrift accounting rules are currently more permissive in categorizing transactions as sales, thereby allowing them to be removed from the balance sheet. Thus, a bank may have a relatively higher leverage ratio capital requirement than a thrift that engages in similar recourse transactions. However, since the OCC's capital rules place primary emphasis on the risk-based capital ratio, rather than the leverage ratio, the OCC does not consider this difference to be a significant one.

The Federal Financial Institutions Examination Council (FFIEC) has also begun an extensive project to review, and possibly revise, the regulatory treatment of recourse arrangements. It is the agencies' intention to work to develop common definitions, as well as uniform reporting and capital treatment, of these recourse arrangements.

There are two other issues related to the capital treatment of recourse exposures in which the banking agencies currently differ from the OTS. The FFIEC's recourse project should eliminate these differences.

1. Under the banking agencies' rules, the capital charge for the off-balance sheet exposure related to an asset sold with recourse is based on the entire outstanding principal balance of that asset, regardless of the actual amount of recourse exposure. The OTS has set the capital charge for these off-balance sheet exposures at the lesser of: (1) The amount of recourse or (2) the capital charge based on the entire outstanding principal balance of the asset.

2. The current regulatory reporting rules for banks only address recourse exposures that arise from transactions involving assets originated by the selling bank. However, a bank may also provide explicit assurances against the risk of loss associated with assets originated by a third party through a variety of means. Due to limitations in the current bank regulatory reporting framework, the capital requirements for the latter type of recourse exposures may differ from those that would arise from the sale of a bank's own assets. The bank regulators are working to develop a consistent and rational set of rules for reporting, capital and lending limit purposes.

The OTS's risk-based capital guidelines currently address two such situations.

a. When a thrift acts as the servicer of a pool of assets that have been originated by others and accepts exposure to credit risk as part of the servicing arrangement, the thrift must

ordinarily hold capital against that exposure in the same manner as it would if it had originated the assets and sold them with a similar amount of recourse.

b. When a thrift purchases a security representing a subordinated interest in loans originated by other parties, the thrift must ordinarily hold capital against all of the underlying loans, just as it would if it had originated some of all of the underlying loans.

C. Mutual Funds

The banking agencies assign risk-weights for banks' investments in mutual funds based upon the riskiest asset that a particular mutual fund is allowed to invest in, regardless of its actual holdings. This approach is taken to account for the unknown future composition and risk characteristics of a fund's holdings. The OTS bases the risk-weight on the asset in the fund with the highest capital requirement; on a case-by-case basis, OTS will allow pro-rata capital weights based upon the actual composition of a fund.

D. Residential Mortgage Loans and Multifamily Mortgage Loans

The banking agencies place a 50% risk-weight on one-to-four family residential mortgage loans. Among other things, these loans must be performing and the bank must adhere to prudent underwriting standards to qualify for the 50% risk-weight. The OTS guidelines allow a 50% risk-weight for one-to-four family residential mortgage loans if the loan-to-value ratio (LTV) does not exceed 80%.

Multifamily (5 units or more) mortgage loans are assigned a risk-weight of 100% by the banking agencies. Multifamily mortgage loans carry the same risks inherent in other commercial loans because they are income-producing properties rather than personal residences. The OTS allows the inclusion of certain multifamily (5–36 units) residential mortgage loans in the 50% risk-weight if several conditions are met (LTV must be 80% or less and occupancy rates must be at least 80%).

E. Nonresidential Construction and Land Loans

The banking agencies assign a risk-weight of 100% to nonresidential construction and land loans. The OTS assigns a risk-weight of 100% to these assets up to an 80% loan-to-value ratio. Any excess portion must be deducted from total capital, using a five-year phase-in. The banking agencies address the risk that arises from excessive loan-to-value ratios through the examination process.

F. Repossessed Assets/Assets More Than 90 Days Past Due

The banking agencies assign a risk-weight of 100% to repossessed assets/assets more than 90 days past due. The OTS currently assigns a 200% risk-weight to these assets, with the exception of one-to-four family real estate mortgages. OTS assigns a 100% risk-weight to one-to-four family real estate mortgages which are 90 days or more past due. In addition, OTS has proposed to place OREO in the 100% risk-weight category.

The highest risk-weight assigned to any asset by the banking agencies is 100%. The banking agencies rely upon the allowance for loan and lease losses for anticipated losses. Writing down assets to fair market value or charging them off effectively results in a reduction of capital. In addition, banks with high levels of risk in asset quality, including a significant volume of nonperforming or past due assets, may be expected to maintain capital ratios above the minimum levels.

G. FSLIC/FDIC-Covered Assets (Assets Subject to Guarantee Arrangements by the FSLIC or FDIC)

The banking agencies generally place FSLIC/FDIC-covered assets in the 20% risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The banking agencies permit a 0% risk-weight only if the guarantee is unconditional and directly backed by the full faith and credit of the U.S. government. We understand that most FSLIC/FDIC-covered assets, including yield maintenance agreements, are conditioned on certain performance or reporting requirements, and cannot be considered unconditional guarantees. The OTS assigns a 0% risk-weight to these assets.

H. Limitations on Limited-Life Capital Instruments in Tier 2 Capital

The banking agencies limit the amount of subordinated debt and intermediate-term preferred stock instruments that may be counted as Tier 2 capital to 50% of Tier 1 capital. In addition, all maturing capital instruments, namely term subordinated debt and limited-life preferred stock, must be discounted by 20% each year of the five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS does not restrict the amount of limited-life capital instruments that may be counted as Tier 2 capital. Furthermore, all maturing instruments issued before November 7, 1989 have been grandfathered with respect to the discounting requirements. For limited-life capital instruments issued on or after November 7, 1989, thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments in Tier 2 capital provided that the amount (of such instruments that mature within the next seven years) maturing in any one year does not exceed 20% of the thrift's total capital.

2. Differences in Allowable Activities

A. Subsidiaries

There are some significant differences in the types of activities in which subsidiaries may engage, as well as the accounting rules for thrifts and banks relative to the consolidation of subsidiaries. These differences can generate variations in the capital requirements since investments in unconsolidated subsidiaries are generally required to be deducted from the capital base. The banking agencies do retain a significant amount of discretion to adjust the accounting treatment of individual subsidiaries for the purposes of assessing capital adequacy. However, the banking agencies generally require the consolidation of all significant subsidiaries of the parent organization. Under the FDIC rules, an exception to this exists when a state nonmember bank or savings association establishes a separately capitalized subsidiary to hold PMSR.

B. Equity Investments

Thrift institutions historically have been permitted to invest in a much broader range of equity investments than banks. While the banking agencies include all equity investments in the 100% risk-weight category. The OTS guidelines require equity investments to be deducted from capital when they do not represent investments in subsidiaries. However, the thrift guidelines provide for a five year phase-in of the deduction requirement. In the interim, the portion not deducted will be risk-weighted at 100%.

C. Pledged Deposits/Nonwithdrawable Accounts; Income Capital Certificates (ICCs) and Mutual Capital Certificates (MCCs)

Thrift institutions may include these instruments as capital. They do not exist within the banking industry.

3. Legislative Requirements

A. Agricultural Loan Losses

Title VIII of the Competitive Equality Banking Act of 1987 (CEBA), Public law No. 100–86, 101 Stat. 552 (1987), permits agricultural banks to amortize losses on qualified agricultural loans over seven years, if approved by the primary regulator. The unamortized portion of these losses is included in Tier 2 capital.

OTS' rules do not include this capital component because CEBA's agricultural loan loss provision do not apply to savings associations.

B. Noncompliance With Capital Standards

FIRREA established statutory restrictions to be implemented by OTS for thrifts in noncompliance with the capital standards. Such actions include growth restrictions and other capital directives. FIRREA does not include similar statutory restrictions for banks. Banking regulators determine the most effective supervisory efforts to assure compliance with capital standards on an individual bank basis.

C. Phase-in Requirements

The banking agencies have adopted transition rules for a two year period which began December 31, 1990. During this period, banks are required to maintain at least 7.25% risk-based capital, and may take advantage of various other transitional rules. For example, up to 10% of Tier 1 capital can be comprised of Tier 2 capital elements. Otherwise stated, the "true" Tier 1 capital to risk-weighted assets need be only 3.25%. On December 31, 1992, the transition rules expire and all banks must maintain at least 4% Tier 1 and 8% total capital to risk-weighted assets.

OTS was required by statute to implement its risk-based capital guidelines by December 7, 1989. FIRREA also provided for a different set of transition rules than those afforded banks, although the ultimate date for full implementation is the same. Thrifts are required to maintain 90% of the 8% risk-based capital standard from December 31, 1990 to December 30, 1992; and 100% thereafter.

Interagency Differences in Accounting Principles

The OCC, as well as the other bank regulatory agencies, requires banks to follow generally accepted accounting principles (GAAP) except when significant supervisory concerns dictate more stringent standards. For the most part, the regulatory accounting standards for all commercial banks, whether regulated by the OCC, the FRB, or the FDIC, are prescribed in the Instructions to the Report of Condition and Income (the Call Report).

The Call Report Instructions are established by the FFIEC, and are generally consistent with GAAP. Differences in interpretations between the OCC and the other banking agencies may occur. However, such differences are usually infrequent and involve immaterial or emerging issues which the FFIEC has not yet reviewed on a joint agency basis.

The OTS requires each thrift institution to file the Thrift Financial Report. That report is filed on a basis consistent with GAAP as it is applied by thrifts, which differs in a few respects from GAAP as it is applied by banks.

These differences in accounting principles between the banks and thrifts may cause differences in financial statement presentation and in amounts of regulatory capital required to be maintained by depository institutions.

The following summarizes the significant differences in accounting standards between the Thrift Financial Report and the Call Report. These differences generally arise because of either: (1) differences between regulatory reporting standards and GAAP applicable to banks, or (2) differences in GAAP applicable to banks and GAAP applicable to thrifts.

1. Specific Valuation Allowances for and Charge-offs of Troubled Loans

The banking regulators require banks to follow bank GAAP to account for the allowance for loan and lease losses (ALLL). The differences between bank and thrift accounting for specific valuation allowances result primarily from differing GAAP principles set forth in their respective industry audit guides.

One such area of difference is in the ALLL established for "collateral dependent" loans. Generally, real estate loans that lack other sources of repayment, or the apparent ability of the borrower to generate such repayment from sources other than the collateral are considered "collateral dependent."

Banks determine the fair value of the collateral for real estate loans using appraisal methodologies, including the "income" or discounted cash flow approach. Charge-off of a portion of the loan or the establishment of a specific valuation allowance to reduce the recorded value of the loan to the fair value of the collateral is generally required.

Conversely, the OTS primarily follows GAAP applicable to thrift institutions to account for the ALLL. Thrift GAAP requires specific valuation allowances for troubled loans (not considered in-substance foreclosed) based on the estimated net realizable value (NRV) of the collateral. NRV represents the estimated future sales price reduced by certain expenses and direct holding costs. Determining direct holding costs includes applying a cost of capital (debt and equity) discount rate to expected cash flows from the property during the anticipated holding period.

However, the OTS expects to propose a new policy for the valuation of troubled assets that focuses on fair value rather than estimated net realizable value of the collateral. Adoption of such a policy would make thrift and bank accounting substantially similar.

2. General Valuation Allowances for Troubled Loans

Previously, differences have existed between banks and thrifts with respect to the establishment of the general valuation allowance for troubled loans.

The banking regulators generally expect the overall balance of the ALLL to be sufficient to cover all losses inherent in the loan portfolio. The amount deemed necessary for the ALLL should include specific allowances for individual loans and pools of loans, based on judgments regarding the risk of loss in those assets. Additionally, it should include some margin for losses that have not been specifically identified in the loan and lease portfolio review process and the risk of loss from possible error in the specific loss estimates.

OTS has adopted a policy which is now substantially similar to that of the bank regulators.

3. Valuation of Foreclosed Real Estate

Banks value foreclosed real estate at fair value while thrift institutions use net realizable value.

The banking regulators require foreclosed real estate to be reported at the lower of book value or fair value at the date of foreclosure. The regulators require additional write-downs of real estate owned if fair value declines further after foreclosure.

The OTS also requires foreclosed real estate to be reported at the lower of book value or fair value at the date of foreclosure. However, valuation allowances for real estate owned after the acquisition date are generally based on the NRV of the property using a cost of capital discount rate. Under the risk-based capital guidelines of OTS, a risk weight of 200% is assigned for real estate owned. The OTS believes this adequately compensates for any additional risk. However, the OTS

advises that they will propose a new policy that focuses on fair value and uses a 100% risk-weight. Such a policy would eliminate the difference that now exists.

4. Futures and Forward Contracts

Differences in accounting for futures and forward contracts result because the banking regulators generally require such contracts to be marked to market, whereas thrift institutions may defer gains and losses resulting from hedging activities.

The banking agencies do not follow GAAP, but require banks to report changes in the market value of futures and forward contracts even when used as hedges in current income. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP. A proposal to permit banks to use hedge accounting for futures contracts other than mortgage banking operations is being considered.

The OTS requires thrifts to follow GAAP to account for futures contracts. Accordingly, when specified hedging criteria are satisfied, the accounting for the futures contract is matched with the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the income effects of the hedged item is recognized. This reporting can result in the deferral of both gains and losses. Although there is no specific GAAP for forward contracts, the OTS applies these same principles to forward contracts.

5. Excess Service Fees

Thrift institutions consider excess servicing fees in the determination of the gain or loss on the loan sale, whereas banks generally recognize the excess fee over the life of the loans.

The banking agencies require banks to follow GAAP for residential mortgage loans. This requires that when loans are sold with servicing retained and the stated servicing fee is sufficiently higher than a normal servicing fee, the sales price is adjusted to determine the gain or loss from the sale. This allows additional gain recognition at the time of sale and recognizes a normal servicing fee in each subsequent year. This gain cannot exceed the gain assuming the loans were sold with servicing released.

For all other loans, the banking agencies follow a more conservative treatment and require that excess servicing fees retained on loans sold be recognized over the contractual life of the transferred asset.

The OTS follows GAAP in valuing all excess service fees. Therefore, the accounting stated above for sales of mortgage loans with excess servicing at banking institutions would apply to all loan sales with excess servicing at thrift institutions.

6. In-Substance Defeasance of Debt

The banking agencies do not permit banks to defease their liabilities in accordance with FASB Statement No. 76, whereas thrifts may eliminate defeased liabilities from the balance sheet.

The banking agencies report in-substance defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

The OTS accounts for debt that has been in-substance defeased in accordance with GAAP. Therefore, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

7. Sales of Assets With Recourse

Banks generally do not report sales of receivables if any risk of loss is retained. Thrifts report sales when the risk of loss can be estimated in accordance with FASB Statement No. 77.

The banking agencies generally allow banks to report transfers of receivables as sales only when the transferring institution: (1) Retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financing, not sales.

However, this rule does not apply to the transfer of mortgage loans under certain government programs (GNMA, FNMA, etc.). Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of mortgages are also reported as sales if the transferring institution does not retain more than an insignificant risk of loss on the assets transferred.

The OTS follows GAAP to account for a transfer of all receivables with recourse. A transfer of receivables with recourse is recognized as a sale if: (1) The Seller surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

During the past year the regulatory agencies requested public comment on recourse arrangements. This request for comment could result in a proposed rule that would potentially reduce the differences in reporting practices between banks and thrifts.

Dated: September 29, 1991.

Susan F. Krause,

Senior Deputy Comptroller for Bank Supervision Policy.

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BILLING CODE 4810-33-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Guercino Drawings from Windsor Castle" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from December 14, 1991 to on or about February 16, 1992; at the National Gallery of Art, Washington, DC, from March 15, 1992, to on or about May 17, 1992; and at the Drawing Center, New York, N.Y., from June 2, 1992, to on or about August 1, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 27, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-24042 Filed 10-4-91; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held in room 724, at VA Central Office, 801 I St., NW., Washington, DC 20001, from November 6, 1991, through November 8, 1991. The meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: Education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 275, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: September 26, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–24041 Filed 10–4–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 194
Monday, October 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 29, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application for contract designation to trade Anhydrous Ammonia futures/ Chicago Board of Trade.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–24181 Filed 10–3–91; 11:25 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 p.m., Tuesday, October 29, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–24182 Filed 10–3–91; 11:25 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 p.m., Tuesday, October 29, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–24183 Filed 10–3–91; 11:25 am]

BILLING CODE 6351-01-M

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Monday, October 28, 1991, at 2:00 p.m.

PLACE: 1825 Connecticut Avenue, N.W., Suite 921, Washington, D.C. 20009.

STATUS: Open.

MATTERS TO BE CONSIDERED: In the 1991 Satellite Royalty Rate Adjustment Proceeding, the Tribunal is calling a pre-arbitration conference to discuss development of a list of qualified arbitrators, the payment to the American Arbitration Association for services rendered, and the procedures to be followed during arbitration.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, D.C. 20009, (202–606–4400).

Dated: October 2, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91–24159 Filed 10–3–91; 9:46 am]

BILLING CODE 1410-09-M

federal register

Monday
October 7, 1991

Part II

Department of the Interior

Minerals Management Service

Chukchi Sea Lease Sale 148; Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Alaska OCS Region

Chukchi Sea
Lease Sale 148

Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS
(Responses Due in 60 Days)

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for proposed Outer Continental Shelf (OCS) Lease Sale 148. This proposed sale, located in the Chukchi Sea Planning Area, is tentatively scheduled for 1994.

Information and nominations on oil and gas leasing, exploration, and development and production within the Chukchi Sea Planning Area are sought from all interested parties. This initial planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331 - 1356) (1988)), and regulations at 30 CFR Part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, and the OCS Lands Act, as amended, and with established departmental procedures.

Description of Area

The area of this Call is located offshore the State of Alaska in the Chukchi Sea. The area available for nominations and comments consists of approximately 4,698 whole and partial blocks (about 25.6 million acres). Respondents may nominate and are asked to comment on any acreage within the entire Call area. A large scale map of the Chukchi Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the Call area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 271-6621. The OPD's may be purchased from the Records Manager for $2.00 each.

Current editions of the listed Official Protraction Diagrams (OPD's) are based on the North American Datum of 1927 (NAD27) and have block boundaries defined in terms of X and Y coordinates of the Universal Transverse Mercator (UTM) grid system based on the Clarke Spheroid of 1866. Prior to the issuance of a Proposed Notice of Sale, new editions of all the listed OPD's will be prepared based on the North American Datum of 1983 (NAD83) and will have block boundaries defined in terms of X and Y UTM coordinates based on the Geodetic Reference System of 1980 (GRS80).

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like included in proposed OCS Lease Sale 148. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that the Minerals Management Service (MMS) could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 60 days following publication of this document in the Federal Register in envelopes labeled **"Nominations for Proposed Chukchi Sea Lease Sale 148,"** or **"Comments on the Call for Information and Nominations for Proposed Chukchi Sea Lease Sale 148,"** as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508-4302.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of potential advantages and disadvantages of oil and gas exploration and development to the Region and the Nation. A third purpose for this Call is to use the comments to initiate the scoping process for the Environmental Impact Statement (EIS) and analyze alternatives to the proposed action. The Notice of Intent to Prepare an EIS is located later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and the State's CMP.

Existing Information

An extensive environmental as well as socioeconomic studies program has been under way in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 271-6620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) as amended, and the OCS Lands Act, as amended, and with established departmental procedures.

Tentative milestones that will precede this sale, proposed for June 1994, are:

Milestones	Dates
Comments Due on the Call	12/06/91
Scoping Comments Due	02/18/92
Area Identification	03/12/92
Draft EIS Published/NOA of PNOS	04/19/93
Hearings on Draft EIS Held	06/03/93
Governor's Comments Due on Proposed Notice	07/19/93
Consistency Determination Signed	01/14/94
FEIS Filed with EPA	02/03/94
Final Notice of Sale Published	05/19/94
Sale	06/22/94

NOTICE OF INTENT TO PREPARE ENVIRONMENTAL IMPACT STATEMENT

(Comments Due in 60 Days)

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, MMS is announcing its

intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 148 in the Chukchi Sea off Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid MMS in determining the significant issues and alternatives to be analvzed in the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled **"Comments on the Notice of Intent to Prepare an EIS on the proposed Chukchi Sea Lease Sale 148."** Comments are due no later than 60 days from publication of this Notice.

Scott Sewell

Director, Minerals Management Service

Scott Sewell

Approved:

Richard Roldan

Deputy Assistant Secretary, Land and Minerals Management

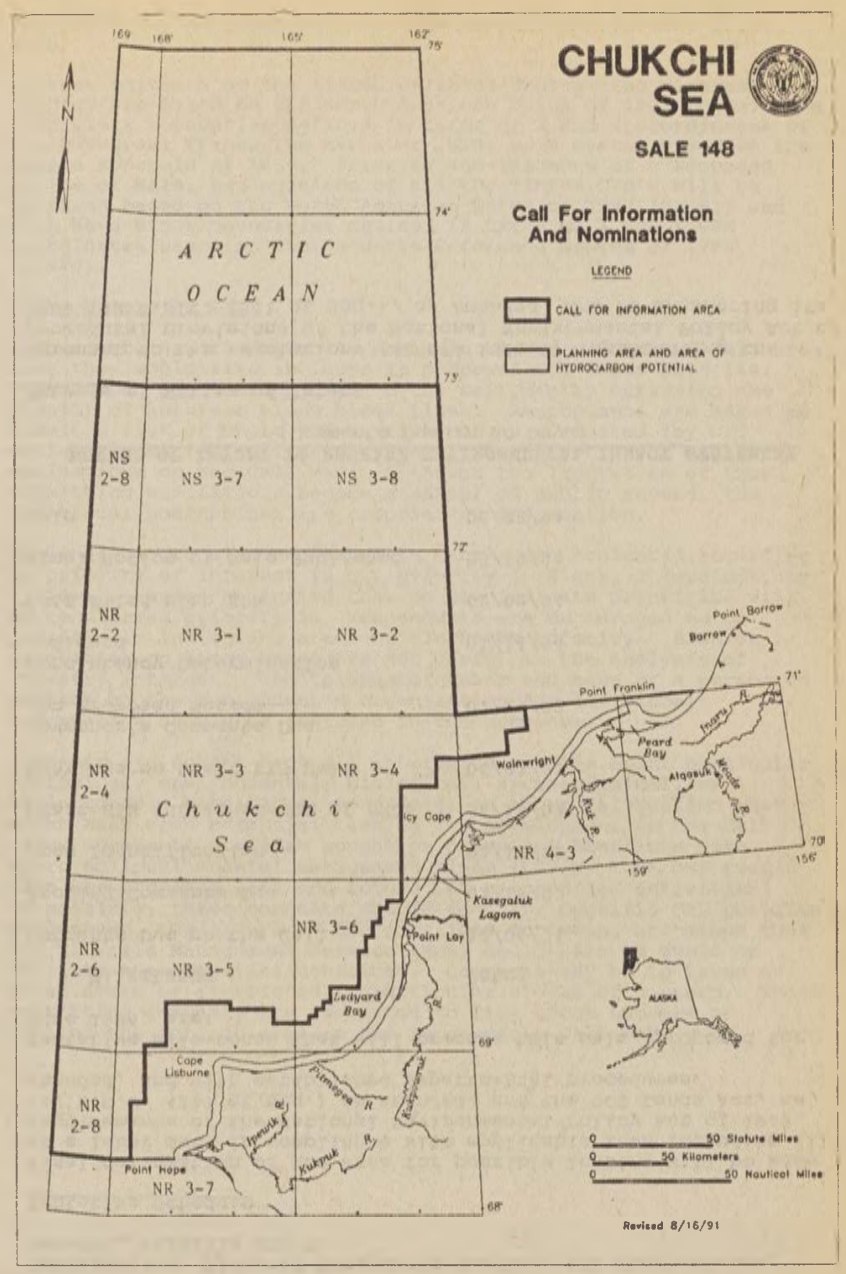
SEP 30 1991

Date

Richard Roldan

[FR Doc. 91-24052 Filed 10-4-91; 8:45 am]

BILLING CODE 4310-MR-C



federal register

Monday
October 7, 1991

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one deferral of budget authority for FY 1991, totaling $86,959,992, and seven deferrals of budget authority for FY 1992, totaling $1,817,019,817.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development and the Departments of Agriculture, Defense, Health and Human Services, State, and Transportation. The details of these deferrals are contained in the attached report.

THE WHITE HOUSE,
September 30, 1991.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	Agency for International Development	
	International disaster assistance,	
D91-11	Executive	86,960
	Total, deferral	86,960
	Funds Appropriated to the President:	
	International Security Assistance:	
D92-1	Economic support fund	244,777
	Agency for International Development	
	International disaster assistance,	
D92-2	Executive	40,704
	Department of Agriculture:	
	Forest Service:	
D92-3	Cooperative work	482,378
	Department of Defense, Civil:	
D92-4	Wildlife conservation	1,416
	Department of Health and Human Services:	
	Social Security Administration:	
	Limitation on administrative	
D92-5	expenses	7,317
	Department of State:	
	Bureau of Refugee Programs:	
	United States emergency refugee and	
D92-6	migration fund	30,053
	Department of Transportation:	
	Federal Aviation Administration:	
	Facilities and equipment, Airport	
D92-7	and airway trust fund	1,010,375
	Total, deferrals	1,817,020

SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1991
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Seventh special message:		
New items	---	86,960
Revisions to previous special messages	---	---
Effects of the seventh special message	---	86,960
Amounts from previous special messages	---	10,260,836
TOTAL amount proposed to date in all special messages	---	10,347,796

SUMMARY OF SPECIAL MESSAGE
FISCAL YEAR 1992
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
First special message:		
New items	---	1,817,020
Revisions to previous special messages	---	---
Effects of the first special message	---	1,817,020
Amounts from previous special messages	---	---
TOTAL amount proposed to date in all special messages	---	1,817,020

Deferral No. 91–11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 107,000,000 (P.L. 101–513 and 102–55)
BUREAU: Agency for International Development	**Other budgetary resources.....** $ 11,036,115
Appropriation title and symbol: International disaster assistance, Executive 11X1035	**Total budgetary resources.....** 118,036,115
	Amount to be deferred: Part of year..... $ 86,959,992 1/ Entire year.....
OMB identification code: 11–1035–0–1–151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multi-year: (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 provided $40 million for disaster assistance activities, and the FY 1991 Desert Storm Supplemental allowed a transfer of $67 million from the Defense Cooperation Account. Funds are deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ The deferred amount has been reduced to $40,703,700 due to subsequent releases.

Deferral No. 92–1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ _____
BUREAU: International Security Assistance	**Other budgetary resources.....** $ 244,777,065
Appropriation title and symbol: Economic support fund 1/ 111/21037 11X1037	**Total budgetary resources.....** 244,777,065
	Amount to be deferred: **Part of year.....** $ 244,777,065 **Entire year.....** _____
OMB identification code: 11–1037–0–1–152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1991 September 30, 1992 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11x1037	11–1037–0–1–152	39,769,000
Economic support fund.....	111/21037	11–1037–0–1–152	205,008,065
			244,777,065

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–1C).

Deferral No. 92–2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	**New budget authority.....** _____
BUREAU: Agency for International Development	**Other budgetary resources.....** $ 40,703,701
Appropriation title and symbol: International disaster assistance, Executive 1/ 11X1035	**Total budgetary resources.....** $ 40,703,701
	Amount to be deferred: Part of year..... $ 40,703,701
	Entire year..... _____
OMB identification code: 11–1035–0–1–151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi–year: _____ (expiration date)	[ ] Contract authority
[X] No–Year	[ ] Other _____

JUSTIFICATION: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 provided $40 million for disaster assistance activities, and the FY 1991 Desert Storm Supplemental allowed a transfer of $67 million from the Defense Cooperation Account. Funds are deferred pending the development of country–specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–11).

Deferral No. 92–3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Agriculture	**New budget authority** ..... $ 355,132,000 (16 U.S.C. 576b)
BUREAU: Forest Service	**Other budgetary resources**..... 492,070,131
Appropriation title and symbol: Cooperative Work 1/ 12X8028	**Total budgetary resources**..... 847,202,131
	Amount to be deferred: Part of year..... $ _____ Entire year..... 482,378,131
OMB identification code: 12–8028–0–7–999	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where timber operators have not completed all of the contract obligations during the year funds are deposited. As a result restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–3).

Deferral No. 92–4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY:
Department of Defense – Civil

BUREAU: Wildlife Conservation
Military Reservations 1/

Appropriation title and symbol:

Wildlife Conservation, Army	21X5095
Wildlife Conservation, Navy	17X5095
Wildlife Conservation, Air Force	57X5095

OMB identification code:
97–5095–0–2–303

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multi–year: _____ (expiration date)
[X] No–Year

New budget authority.....$ 2,375,000
(16 U.S.C. 670F)
Other budgetary resources.... 2,016,250

Total budgetary resources..... 4,391,250

Amount to be deferred:
Part of year.....
Entire year.....$ 1,416,250

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army.....	21X5095	97–5095–0–2–303	$ 700,000
Wildlife Conservation, Navy.....	17X5095	97–5095–0–2–303	192,000
Wildlife Conservation, Air Force....	57X5095	97–5095–0–2–303	524,250
			1,416,250

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in FY 1991 (D91–4).

D92–4

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. 92–5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Health and Human Services	**New budget authority**.....
BUREAU: Social Security Administration	**Other budgetary resources**..... $ 14,217,051
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources**..... 14,217,051
	Amount to be deferred: Part of year..... Entire year..... $ 7,317,051
OMB identification code: 20–8007–0–7–651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: This account contains the no–year funds appropriated to the Social Security Administration (SSA) prior to FY 1991 for construction and renovation of SSA facilities, and for Information Technology Systems (ITS). It has been determined that obligational authority for construction projects in the amount of this deferral is not currently needed. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–5A).

Deferral No. 92–6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of State	**New budget authority.....**
BUREAU: Bureau of Refugee Programs	**Other budgetary resources.....** $ 30,092,650
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	**Total budgetary resources.....** $ 30,092,650
	Amount to be deferred: Part of year..... $ 30,052,650
	Entire year.....
OMB identification code: 11–0040–0–1–151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi–year: (expiration date)	[ ] Contract authority
[X] No–Year	[ ] Other

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94–141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96–212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–6B).

Deferral No. 92–7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Transportation	**New budget authority**.....
BUREAU: Federal Aviation Administration	**Other budgetary resources**..... $ 1,967,696,894
Appropriation title and symbol: Facilities and equipment (Airport and airway trust fund) 1/ 69X8107 699/38107 691/58107 690/48107 698/28107	**Total budgetary resources**..... 1,967,696,894
	Amount to be deferred: Part of year..... Entire year..... 1,010,374,969
OMB identification code: 69–8107–0–7–402	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [X] Multi–year: 9/30/92 9/30/93 9/30/94 9/30/95 2/ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Funds from this account are used to continue to procure specific Congressionally–approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, and the purchase of new equipment for new or improved air traffic control towers, automation of the enroute airway control system, and expansion/improvement of navigational and landing aid systems. Funds to continue these activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress. Because of the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with FAA's full funding approach and Congress' intent to provide resources for a project's total cost, and is taken under provision of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–7A).

2/ None of the deferred funds expire at the end of FY 1992.

[FR Doc. 91–24035 Filed 10–4–91; 8:45 am]
BILLING CODE 3110–01–C

federal register

Monday
October 7, 1991

Part IV

Environmental Protection Agency

Sole Source Designation of the Eastern Snake River Plain Aquifer, Southern Idaho; Final Determination

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3994-3]

Sole Source Designation of the Eastern Snake River Plain Aquifer, Southern Idaho

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Region 10 Administrator of the U.S. Environmental Protection Agency (EPA) has designated the Eastern Snake River Plain Aquifer as a sole source aquifer. As a result of this determination, federal financially-assisted projects proposed in the project review area will be subject to EPA review to ensure that these projects are designed and constructed to protect water quality.

EFFECTIVE DATE: This determination shall be final and effective for purposes of judicial review at 1 p.m. Eastern time 90 days after the date of publication in the **Federal Register.**

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the main public library in most cities and towns of south-central and southeastern Idaho, including Blackfoot, Burley, Gooding, Idaho Falls, Jerome, Pocatello, Rupert, Rexburg, Saint Anthony, and Twin Falls. Other locations where this information can be found include: The Idaho state library in Boise; the Nevada state library in Carson City; the public library in Elko, Nevada; Teton County Library in Jackson, Wyoming; EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams, Hydrogeologist, Office of Ground Water, WD-139, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1541 or FTS 399-1541.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h-3(e), Public Law 93-523) the Region 10 Administrator of the U.S. Environmental Protection Agency has determined that the Eastern Snake River Plain Aquifer, located in southern Idaho, is the sole source of drinking water for the eastern Snake River Plain, and that contamination of this aquifer would create a significant hazard to public health. Accordingly, pursuant to section 1424(e), federal financially-assisted projects proposed in the project review area will be subject to EPA review.

EPA is issuing this final determination based upon information which has been summarized in Support Document for Designation of the Eastern Snake River Plain Aquifer as a Sole Source Aquifer, prepared by the EPA Region 10 Office of Ground Water. The Agency has previously received and evaluated public comment on its proposal to designate the Eastern Snake River Plain Aquifer as a sole source aquifer. These comments were received years ago, however, and so interested parties may submit comments within the next 30 days to the address noted above. If EPA receives significant new information relevant to the technical basis for this determination, the Agency will publish a further notice responding to that information.

Consequently, EPA is delaying the effective date of this determination until 90 days after today's date. This will allow enough time for the Agency to review any comments received during the 30-day comment period and, if appropriate, to publish a further notice. Accordingly, the 45-day period for judicial review of today's determination under section 1448(a)(2) of the Safe Drinking Water Act does not begin until 90 days from today. (See 40 CFR 23.7 for EPA's authority to modify the date of "determination" for purposes of section 1448(a)(2).)

I. Background

Section 1424(e) of the Safe Drinking Water Act states: "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register.** After the publication of such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

EPA defines a sole or principal source aquifer as one which supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. Current EPA guidelines also stipulate that designated sole or principal source aquifer areas have no alternative source or combination of sources which could physically, legally, and economically supply all those who obtain their drinking water from the aquifer. For convenience, all EPA designated sole or principal source aquifers are often referred to simply as "sole source aquifers."

EPA has not to date initiated any sole source aquifer designations; the Agency has only responded to petitions. On September 25, 1982, the EPA Administrator received a written petition from the Hagerman Valley Citizens' Alert, Inc., requesting that EPA designate the aquifer underlying the eastern Snake River Plain as a sole source aquifer. Additional information was provided to EPA on October 27, 1982.

In order to obtain public comment, EPA distributed a news release on March 31, 1983, stating that (1) EPA received a petition from the Hagerman Valley Citizens' Alert, Inc. to designate the Eastern Snake River Plain Aquifer as a sole source aquifer, (2) informal public meetings were to be held, and (3) public comments were being solicited. EPA also prepared a **Federal Register** notice, published February 9, 1983, which acknowledged receipt of the petition and solicited public comment until April 11, 1983.

On March 22, 1984, a **Federal Register** notice was published which announced the draft publication of a support document for designating the "Snake River Plain Aquifer" as a sole source aquifer. The notice also announced that public hearings would be held only if sufficient public interest was expressed. Copies of the **Federal Register** notice and support document were sent to local, state, and federal officials, public libraries, and representatives of various interest groups. EPA issued a news release on March 29, 1984 which stated that (1) EPA was proposing to designate the "Snake River Plain sole source Aquifer," (2) public comment was being sought until April 20, 1984, and (3) two public hearings were tentatively set for May 7 and May 8, 1984, if sufficient public interest was expressed. Another press release, which also summarized the **Federal Register** notice of March 22, 1984, was issued by the Idaho Department of Water Resources on April 18, 1984.

On April 25, 1984, EPA issued a news release which announced that (1) the public hearings were cancelled due to lack of public interest, and (2) the public comment period was extended to May 25, 1984. After the announced

cancellation of the hearings, EPA received a number of requests to reschedule them. On June 22, 1984, an EPA news release stated that (1) the public hearings were rescheduled for August 13 and August 14, 1984, at Twin Falls and Idaho Falls respectively, and (2) the public comment period extended to August 24, 1984.

Shortly after the public hearings, the Governor and Attorney General of Idaho sent EPA a joint letter, dated August 20, 1984, which expressed opposition to sole source aquifer designation. The Region 10 EPA Administrator responded with a letter to the Governor on September 19, 1984, and met personally with the Governor on November 7, 1984.

On January 16, 1985, the EPA Regional Administrator announced her decision to postpone making a decision on the sole source aquifer petition. The Magic Valley Aquifer Coalition wrote the EPA Regional Administrator on April 4, 1985, and asked her to reconsider her decision to postpone sole source aquifer designation.

The petitioners wrote EPA on November 10, 1986, to inquire about the status of their petition. The Agency responded by confirming that their petition was complete, and would be processed by EPA. The petitioners followed up this response with letters to either EPA or the state governor on the following dates: January 15, 1987; June 11, 1987; November 2, 1987.

The EPA Regional Administrator received an unsolicited letter from the Governor of Idaho on February 11, 1988. The letter requested that EPA continue to delay a decision on the sole source aquifer petition. Later that year, the Shoshone-Bannock Tribes and the Committee for Idaho's High Desert wrote the EPA Regional Administrator, and urged EPA to act upon the sole source aquifer petition.

On July 12, 1990, the EPA Regional Administrator wrote Governor Andrus to inform him that EPA was proceeding with sole source aquifer designation for the Eastern Snake River Plain Aquifer. In response, the Region 10 Office of Ground Water has prepared an updated technical support document and other documentation supporting the designation.

II. Basis for Determination

In designating the Eastern Snake River Plain Aquifer as a sole source aquifer under section 1424(e), EPA has determined that (1) the aquifer is the sole or principal source of drinking water in the area, and (2) if contaminated, a significant hazard to public health would result.

Based on the information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The Eastern Snake River Plain Aquifer supplies all of the drinking water used in the eastern Snake River Plain.

2. No economically feasible alternative drinking water sources exist within the area or nearby which could supply all those who now depend upon the aquifer as their source of drinking water.

3. Because of the two findings above, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the Eastern Snake River Plain Aquifer

(Some information in this section represents an unfootnoted summary of material from: Support Document for EPA Designation of the Eastern Snake River Plain Aquifer as a Sole Source Aquifer, produced in August of 1990 by the EPA Region 10 Office of Ground Water.)

The eastern Snake River Plain covers about 10,800 square miles of southern Idaho. The area covers almost two-thirds of the arc-shaped greater Snake River Plain, which extends across southern Idaho from near the Wyoming border into eastern Oregon.

The 45 to 60 mile wide eastern Snake River Plain cuts almost perpendicularly across the north-south trend of the surrounding mountain ranges and intermontane valleys. The land surface of the eastern Snake River Plain contains little topographic relief compared to the surrounding mountains, but does contain some locally impressive buttes and rugged volcanic scabland areas. Overall, the surface of the area slopes westwardly, from about 6000 feet near the eastern margin of the Snake River Plain to about 3200 feet where the eastern and western parts of the Snake River Plain meet.

An arid to semi-arid climate prevails across the eastern Snake River Plain. Annual precipitation averages 6–12 inches over most of the area. Average temperatures vary according to elevation such that the average growing season ranges in length from 150 days at the western part of the eastern Snake River Plain to about 100 days near the eastern margin of the area.

Approximately 275,000 people live in the eastern Snake River Plain. Population centers are clustered almost exclusively in a band within 10 miles of the Snake River. About 39 percent of the population lives in unincorporated areas, many of them on farms and ranches.

Irrigated agriculture and associated industries dominate the economy of the eastern Snake River Plain and many of its tributary valleys. The Idaho National Engineering Laboratory and an expanding recreation industry account for much of the remaining economic activity of the area.

The eastern Snake River Plain is a structural downwarp filled with volcanic rocks extruded during the Tertiary and Quaternary periods of geologic time. Volcanism ceased as recently as 2000 years ago in some areas. Numerous layers of flood-type basalt (extruded mostly from linear vents) are intercalated with sediments deposited by wind and water. Individual basalt flows range from about 10 to 50 feet thick, and average 20 to 25 feet in thickness.

Most ground-water flows laterally along flow tops (composed of vesicular and broken basalt formed by rapid lava cooling), but some water moves vertically through cooling fractures within the interior portion of basalt flows. Vertical migration of ground water is severely restricted where fine-grained sediments occur between basalt flows whereas coarse-grained sediments between flows favor fluid migration.

On a regional scale, ground-water moves westwardly at an average gradient of 12 feet per mile. However, ground-water flow directions and gradients vary markedly from the norm in some areas. Recharge to the ground-water system occurs from percolation of surface water used for irrigation (60%), underflow from tributary drainage basins (25%), direct precipitation upon the eastern Snake River Plain (10%), and losses from the Snake River (5%). Ground-water discharge occurs as seeps and springs to surface water or as withdrawal from water wells. Most ground-water discharge occurs along a reach of the Snake River between Milner and King Hill known as the Thousand Springs area.

In some areas, thick deposits of Quaternary sediment mantle the basalt. Where saturated, these sediments form aquifers which may be tapped by wells instead of or in addition to the underlying basalt beds. In places, Quaternary sediment aquifers are "perched," meaning that unsaturated earth materials occur between the base of the aquifer and the regional aquifer. Ground-water movement to the underlying basalt regional aquifer may occur at extremely slow rates in such areas.

Non-thermal ground water beneath the eastern Snake River Plain is generally of naturally high quality with respect to drinking water standards. Available data suggest that background water quality of basalt and alluvial aquifers is similar.

Man-induced contamination has been documented in widespread areas at levels below drinking water standards, and in more localized areas at levels which exceed drinking water standards. Documented instances of ground-water degradation above drinking water standards have occurred in both urban and rural areas, from a variety of land-use, hazardous material handling, and wastewater disposal practices.

Waste disposal practices at the Idaho Engineering Laboratory (INEL) have resulted in widespread and well documented ground-water contamination beneath part of the 890 square mile reservation. Radioactive waste disposal through injection wells began in 1952, and was halted in 1984. Waste disposal lagoons continue to leak a mixture of contaminants to ground water.

The nuclear research and production facility has been designated as a National Priority List "Superfund" site by EPA. This EPA designation is not related to EPA sole source aquifer designation under the Safe Drinking Water Act. After EPA sole source designation, federal financial assistance at INEL will be subject to review under section 1424(e) of the Safe Drinking Water Act. However, as far as EPA knows, INEL operates entirely upon direct federal funding; the Agency is unaware of any federal financially assisted projects at the facility.

Hydrogeologic susceptibility to contamination from activity at the land surface varies considerably within the eastern Snake River Plain. Significant differences in the thickness and nature of the unsaturated zone account for much of the variation in hydrogeologic susceptibility. For instance, areas where fractured basalt crops out at the land surface are generally more susceptible to contamination than areas where thick deposits of clay-rich material provide some degree of natural protection to the underlying ground-water resource.

Some practices, such as the use of injection wells or inadvertent use of leaky underground storage tanks, partly or entirely override whatever degree of natural protection is afforded by the unsaturated zone. This is of particular concern in the eastern Snake River Plain because of the widespread use of drain wells (Class V injection wells) to dispose of excess irrigation water, urban storm runoff, and septic-system effluent.

Open-hole well construction is a common practice in the eastern Snake River Plain which may have ground-water quality impacts. When much of the borehole is uncased, water can sometimes mingle freely between producing zones. This could be a significant concern wherever hydraulic head relationships are such that a stratigraphic interval of poor quality water could contaminate zones of high quality water.

Ground water withdrawn from wells and springs supplies 100 percent of the drinking water consumed within the eastern Snake River Plain. Alternative sources are legally available but can only economically supply about 40 percent of the population. EPA's position is that a petitioned aquifer which is a sole or principal source of drinking water should be excluded from EPA designation as a sole source aquifer only if alternative sources can feasibly supply all those who obtain their drinking water from the aquifer.

IV. Project Reviews

When EPA publishes a determination for a sole or principal drinking water source, the consequence is that no commitment for federal financial assistance may be made if the Administrator finds that the federal financially-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health (Safe Drinking Water Act section 1424(e), 42 U.S.C. 300h–3(e)). In many cases, these federal financially-assisted projects may also be analyzed in a National Environmental Policy Act (NEPA) document, 42 U.S.C. 4332(2)(c).

In order to streamline EPA's review of the possible environmental impacts upon EPA designated sole source aquifers, when a proposed action is analyzed under section 1424(e) of the Safe Drinking Water Act and in a NEPA document, the two reviews will be consolidated, and both authorities will be cited. The EPA review under the Safe Drinking Water Act of federal financially-assisted projects potentially affecting sole source aquifers will be included in the EPA review of any NEPA document accompanying the same federal financially-assisted project. The letter transmitting EPA's comments on the final Environmental Impact Statement to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

EPA Region 10 intends to only review projects in detail which may have a significant ground-water quality impact. (This includes direct and indirect ground-water quality impacts. Also, cumulative ground-water quality concerns posed by individual projects may be considered.) EPA Region 10 uses memoranda of understanding (MOUs) with federal funding agencies to define the types of projects which EPA does and does not need to review. The Regional Office of Ground Water will work to update existing MOUs with federal funding agencies to include the Eastern Snake River Plain Aquifer.

Only about 10 percent of the water recharging the aquifer originates as precipitation over the eastern Snake River Plain; the other 90 percent originates as precipitation within the streamflow source area. Since projects within the streamflow source area may contaminate the aquifer through its recharge area, federal financially-assisted projects are subject to review under section 1424(e) of the Safe Drinking Water Act. Of course, water quality is also important from a local use standpoint in the streamflow source area.

Project review responsibility for the streamflow source area in Utah and Wyoming rests with EPA Region 8 in Denver. Likewise, project review responsibility for the streamflow source area in Nevada rests with EPA Region 9 in San Francisco. The Administrators of Regions 8 and 9, and the Assistant Administrator for Water at EPA have concurred with this designation and project review responsibility.

EPA Region 10 has a practice of attempting to coordinate project reviews with local, state, and tribal agencies who have responsibility for ground-water quality protection. These efforts build professional relationships and technical understanding between agencies. Additionally, where local, state, or tribal capability to protect ground-water quality is sufficiently advanced, EPA may forego full review of federal financially-assisted projects in sole source aquifer areas if the projects meet local, state, or tribal standards. This process may occur through MOUs with federal funding agencies or through informal professional arrangements between EPA staff and their counterparts at local, state, or tribal agencies.

V. Discussion of Public Comment

EPA Region 10 received numerous written comments in response to (1) the public comment periods announced in the **Federal Register** and through EPA and other agency press releases during 1983 and 1984, (2) informal public meetings held by EPA on December 8, 1982, April 13, 1983 and April 14, 1983, and (3) public hearings held on August

13th and 14th of 1984. Additionally, a few unsolicited comment letters were received after the EPA Region 10 Administrator's January of 1985 decision to hold the petition in abeyance.

Written comments in favor of sole source aquifer designation were received from the Shoshone-Bannock Tribes, Hagerman Valley Citizens' Alert, Magic Valley Aquifer Coalition, Committee for Idaho's High Desert, Snake River Audubon Society, Prairie Falcon Audubon Society, a state representative from Ketchum, and 52 individuals. Some letters simply urged EPA to make the proposed sole source aquifer designation whereas others offered one or more observations or opinions. Observations included the following: The aquifer meets all criteria for sole source aquifer designation; numerous land-use and wastewater disposal practices may threaten ground-water quality; EPA designation will not prevent the state of Idaho from protecting ground-water quality; EPA had not consulted the Shoshone-Bannock Tribes before deciding to defer a designation decision in 1985. Opinions expressed beyond the desire for sole source aquifer designation focused upon shortcomings of federal, state and local agencies whose public investment or regulatory responsibilities relate to ground-water quality.

EPA received written comments interpreted to be neutral, because they do not explicitly support or oppose sole source aquifer designation, from the U.S. Bureau of Reclamation, the Idaho Division of Environmental Quality, the Idaho Water Resource Board, and the League of Women Voters of Idaho.

Written comments in opposition to sole source aquifer designation were received from the Governor and Attorney General of Idaho, Idaho Water Users Association, Lower Snake River Aquifer Recharge District, North Fork Reservoir Company, Watermaster for Idaho Water District 36–A, Committee of Nine for Water District #1, North Side Canal Company, two law firms, and two individuals. Comments in opposition to sole source designation revolve largely around the following topics: Alternative water supplies; local, state, and federal responsibilities; water allocation concerns; aquifer size and heterogeneity; pollution prevention; economic development; petitioner influence.

Both law firms and some other opponents of sole source designation pointed out that EPA had not conducted any formal legal or economic analyses to substantiate the Agency's determination that feasible alternative sources of drinking water are not available. Some opponents contended that creeks, rivers, and canals within the eastern Snake River Plain or streamflow source area could adequately serve as alternative water supplies.

In response, EPA analyzed the legal and economic feasibility of alternative water supplies. The analysis concludes that alternative water supplies are legally available for all who use the aquifer as a drinking water source, but alternative water supplies cannot economically supply the entire population of the eastern Snake River Plain.

A number of commenters object to EPA accepting any responsibility for water quality protection within the eastern Snake River Plain and streamflow source area. Some letters also contain statements which confuse sole source aquifer designation with federal ground-water classification or with comprehensive efforts to protect ground-water quality. A number of letters point out that local and state agencies in the area are charged with protecting water quality, and many consider their efforts more than adequate. One opponent proposed that the state of Idaho control federal monies spent within the state.

In response, EPA first notes that its actions are carrying out federal law. Disagreements with section 1424(e) of the Safe Drinking Water Act should be addressed to the U.S. Congress. Second, over a decade of experience has shown that sole source aquifer designation does not hamper state and local efforts to protect ground-water quality. In contrast, sole source aquifer designation enhances and backstops state and local ground-water protection measures. Third, sole source aquifer designation does not authorize or lead to comprehensive federal ground-water quality protection. Finally, EPA is not aware of federal, state, or local agencies operating in the area who would not agree that efforts to protect ground-water quality could be improved.

Some opponents believe that the limited federal ground-water quality protection provided by section 1424(e) of the Safe Drinking Water Act represents a first step toward complete federal control of water allocation within Idaho. In addition, concern was expressed that sole source designation would inhibit the resolution of a major water rights dispute between the state of Idaho and Idaho Power Company.

In response, section 1424(e) of the Safe Drinking Water Act does not address water allocation issues. Any impacts upon water allocation would be restricted to instances where water quantity and quality are integrally related on a proposed project involving federal financial assistance. In addition, the water allocation lawsuit between the state of Idaho and Idaho Power has been settled.

Numerous letters of objection point out that the eastern Snake River Plain Aquifer system is large and hydrogeologically complex. Along this same line of reasoning, many point out that geologic and hydrologic information is sparse in some areas, and that available information may be interpreted differently. Some propose that sole source aquifer designation be deferred until further study allows better understanding of the large and complex aquifer system. Others propose that EPA designate some small area in the vicinity of Hagerman.

In response, EPA believes that the geologic and hydrologic information reviewed is adequate to confer sole source aquifer designation. EPA has selected the boundaries of the Eastern Snake River Plain Aquifer and streamflow source area on the basis of available information such as the U.S. Geological Survey Snake River Plain Regional Aquifer System Analysis.

Many opponents see no compelling need for further ground-water pollution prevention efforts. Some opponents object to the idea of reviewing projects for ground-water quality impacts since overall ground-water quality within the aquifer is generally good to excellent. Others describe how the unsaturated zone and aquifer materials within the eastern Snake River Plain will partly attenuate some contaminants. Still others point out that the aquifer is too voluminous to become entirely contaminated under any realistic scenario.

EPA agrees that contamination of the entire aquifer is highly unlikely, but notes that documented instances of local ground-water contamination abound. Further, parts of the aquifer are vulnerable to contamination from a variety of land-use, hazardous material handling, and waste water disposal practices. EPA believes that the high costs of cleaning up contaminated ground water (where technically possible) make clear the wisdom of preventing ground-water pollution from occurring.

A number of opponents express economic concerns about sole source aquifer designation. Some contend that the designation would damage important segments of southern Idaho's economy by blocking or delaying federal financially-assisted projects.

In response, sole source aquifer determinations under section 1424(e) of

the Safe Drinking Water Act are not based upon economic considerations other than the cost of potential alternative drinking water supplies. EPA does acknowledge that ground-water quality protection costs money; however, it represents an investment which will pay for itself many times over. The high cost of replacing contaminated drinking water supplies and cleaning up polluted ground water (where possible) underscores the wisdom of spending funds for ground-water protection now rather than for mitigation and remediation efforts later. Based upon past experience, the Agency considers fears about dire economic impacts from sole source aquifer designation to be largely unfounded. Region 10 has not yet, in over 10 years of reviewing sole source aquifer projects, had to disapprove any projects. In the past, project proponents seeking federal financial assistance have been able to modify projects, as required by EPA, in order to protect ground-water quality.

EPA Region 10 shares concerns about project review delays. Designation of the Eastern Snake River Plain Aquifer will increase the workload of the Regional Office of Ground Water hydrogeologic staff. Federal funding agencies often have no hydrogeologic expertise on staff. State, tribal, and local agencies are not yet at a point where EPA can consistently make use of their analyses. However, EPA will not refuse to respond to a sole source aquifer petition nor allow substandard project review work simply to avoid project review delays. EPA Region 10 intends to work hard to minimize delays, without compromising ground-water quality protection. Some proposed projects, however, may face delay, particularly if design modifications are necessary to protect ground-water quality.

Some opponents to sole source aquifer designation question the motives of the petitioners. Other simply assert that such a small group of people should not be able to precipitate EPA sole source aquifer designation.

In response, EPA believes that the motivation(s) of persons expressing their concern about ground-water quality protection is not relevant. In addition, it should be noted that section 1424(e) of the Safe Drinking Water Act authorizes EPA to initiate sole source aquifer designations even where there has been no request at all.

VI. Summary

Today's action only affects the eastern Snake River Plain in southern Idaho, and the streamflow source area in parts of Idaho, Nevada, Utah and Wyoming. This action provides a review process that allows ground-water quality protection measures to be incorporated into federal financially-assisted projects.

Dated: August 29, 1991.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 91-21671 Filed 10-4-91; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
October 7, 1991

Part V

The President

Executive Order 12775—Prohibiting Certain Transactions With Respect to Haiti

Federal Register
Vol. 56, No. 194
Monday, October 7, 1991

Presidential Documents

Title 3—

The President

Executive Order 12775 of October 4, 1991

Prohibiting Certain Transactions With Respect to Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code,

I, GEORGE BUSH, President of the United States of America, find that the grave events that have occurred in the Republic of Haiti to disrupt the legitimate exercise of power by the democratically elected government of that country constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, all property and interests in property of the Government of Haiti, its agencies, instrumentalities and controlled entities, including the Banque de la Republique d'Haiti, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, any direct or indirect payments or transfers to the de facto regime in Haiti of funds, including currency, cash or coins of any nation, or of other financial or investment assets or credits, by any United States person, or by any person organized under the laws of Haiti and owned or controlled by a United States person, are prohibited. All transfers or payments owed to the Government of Haiti shall be made when due into an account at the Federal Reserve Bank of New York, or as otherwise may be directed by the Secretary of the Treasury, to be held for the benefit of the Haitian people.

Sec. 3. For the purposes of this order:

(a) The term "de facto regime in Haiti" means those who seized power illegally from the democratically elected government of President Jean-Bertrand Aristide on September 30, 1991, and includes any persons, agencies, instrumentalities, or entities purporting to act on behalf of the de facto regime, or under the asserted authority thereof, or any extraconstitutional successor thereto.

(b) The term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States.

Sec. 4. The measures taken pursuant to this order are not intended to block private Haitian assets subject to the jurisdiction of the United States, or to prohibit remittances by United States persons to Haitian persons other than the de facto regime in Haiti.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property, or any transactions involving the transfer of anything of economic value, by any United States person to the de facto regime in Haiti. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 6. This order is effective immediately.

Sec. 7. Nothing contained in this order shall confer any substantive or procedural right or privilege on any person or organization, enforceable against the United States, its agencies or its officers, or the Federal Reserve Bank of New York or its officers.

This order shall be transmitted to the Congress and published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
October 4, 1991.

[FR Doc. 91-24350
Filed 10-4-91; 2:46 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks on Haiti, see issue 40 of the *Weekly Compilation of Presidential Documents.*

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Vol. 56, No. 194

Monday, October 7, 1991

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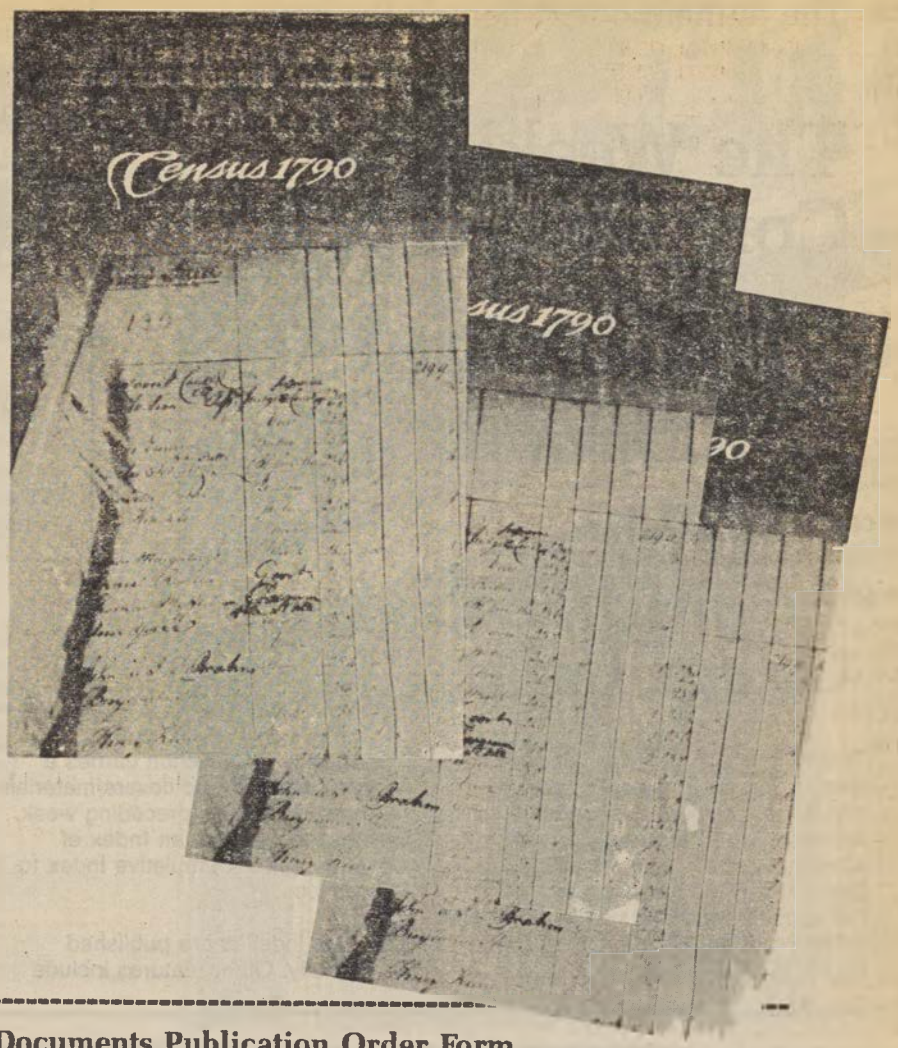

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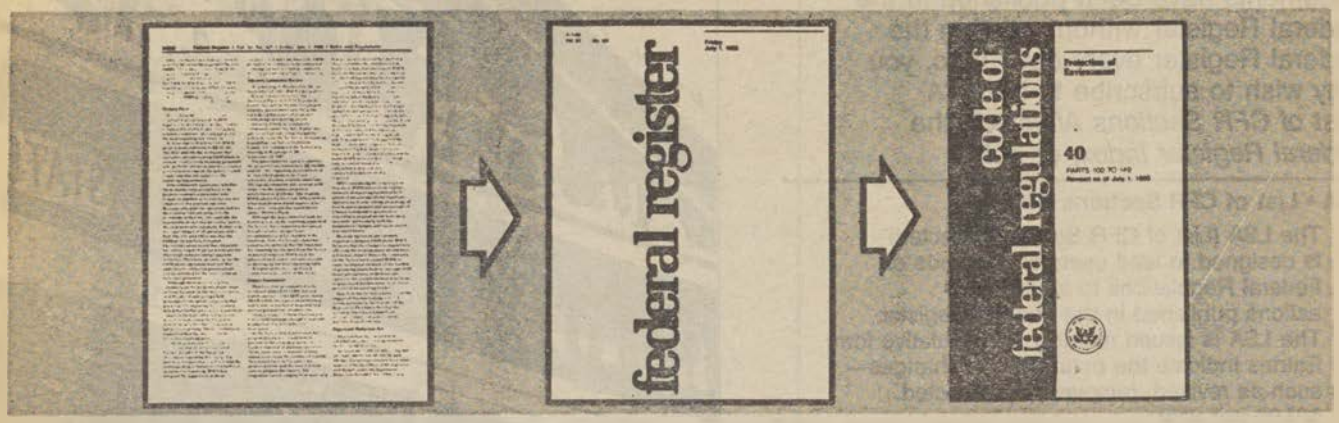

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