AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

11-26-91
Vol. 56 No. 228
Pages 59849-60044

federal register

Tuesday
November 26, 1991

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

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

Contents

Federal Register

Vol. 56, No. 228

Tuesday, November 26, 1991

Agency for Health Care Policy and Research
NOTICES
Committees; establishment, renewal, termination, etc.:
Alzheimer's Disease screening clinical guidelines panel, 59950

Agency for International Development
NOTICES
Housing guaranty programs:
Philippines, 59960

Agriculture Department
See Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Individuals with mental illness, protection and advocacy; State guidelines for 1992-1995 FYs allotments, 59951

American Indian, Alaskan Native and Hawaiian Native Housing, National Commission
See National Commission on American Indian, Alaskan Native and Hawaiian Native Housing

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Rapeseed plants, 59925

Army Department
See Engineers Corps

Coast Guard
RULES
Drawbridge operations:
District of Columbia, 59880

Commerce Department
See also National Institute of Standards and Technology; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 59926, 59927
(3 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Philippines, 59930

Commodity Credit Corporation
RULES
Loan and purchase programs:
Upland cotton marketing certificate provisions, 59851

Copyright Office, Library of Congress
RULES
Fee schedules, 59884

Defense Department
See also Engineers Corps; Navy Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Drug benefits; appropriate level of care provisions, 59870
Medical documentation requirements, 59873
NOTICES
Agency information collection activities under OMB review, 59931

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Bilingual education; State educational agency program, 59931

Employment and Training Administration
NOTICES
Labor surplus areas classifications:
Annual list
Additions, 59962

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Alenco Resources Inc., 59935

Engineers Corps
PROPOSED RULES
Navigation regulations:
St. Marys Falls Canal and Locks, MI; use, administration, and navigation, 59913
NOTICES
Environmental statements; availability, etc.:
Jackson et al., MS; flood protection plan, 59931

Environmental Protection Agency
RULES
Air programs; State authority delegations:
Tennessee, 59886
NOTICES
Agency information collection activities under OMB review, 59936
Hazardous waste:
Confidential business information and data transfer to contractors, 59937, 59938
(2 documents)
Toxic and hazardous substances control:
Premanufacture notices receipts, 59938

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 59977
(2 documents)

Federal Aviation Administration
RULES
Airworthiness directives:
EMBRAER, 59867
McDonnell Douglas, 59868
PROPOSED RULES
Airworthiness directives:
Avions Marcel Dassault-Breguet Aviation, 59902
NOTICES
Airport noise compatibility program:
Noise exposure map—
Wiley Post Airport, OK, 59966
Meetings:
Aviation Security Advisory Committee, 59967

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Montana Natural Resources and Conservation Department, 59932
(2 documents)
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 59932
(2 documents)
El Paso Natural Gas Co., 59933
Great Lakes Gas Transmission Limited Partnership, 59933
Great Lakes Gas Transmission Limited Partnership; correction, 59979
Northwest Alaskan Pipeline Co., 59933
Texas Eastern Transmission Corp., 59934
Trailblazer Pipeline Co., 59934
Transwestern Pipeline Co., 59934
Trunkline Gas Co., 59935
Wyoming Interstate Co., Ltd., 59935

Federal Financial Institutions Examination Council
PROPOSED RULES
Practice and procedures:
Temporary waiver proceedings, 59899

Federal Housing Finance Board
PROPOSED RULES
Federal home loan bank system:
Dividends paid on Federal Home Loan Bank stock, 59898

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Majesty Cruise Line, Inc., et al., 59939
Complaints filed:
DSR Shipping Co., Inc., et al., 59939

Federal Railroad Administration
RULES
Railroad user fees
Meeting, 59893
NOTICES
Exemption petitions, etc.:
Keokuk Junction Railway et al., 59967
National Railroad Passenger Corp. et al., 59968

Federal Reserve System
RULES
Home mortgage disclosure (Regulation C):
Reporting and recordkeeping requirements, 59853
NOTICES
Meetings; Sunshine Act, 59977
Applications, hearings, determinations, etc.:
Associated Banc-Corp et al., 59940
First Autauga Bancshares, Inc., et al., 59940
Gritzman, Mary Palmifano, et al., 59941

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 59941
Prohibited trade practices:
Money Store Inc. et al., 59942
Nintendo of America Inc., 59946
Slender You, Inc., et al., 59946
T&N plc, 59949

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Applegate's milk-vetch, 59917
NOTICES
Environmental statements; availability, etc.:
Florida panthers; removal from wild population to establish captive population, 59958

Food and Drug Administration
PROPOSED RULES
Medical devices:
Device user facilities and distributors; death, illness and serious injury reporting requirements, 60024

Forest Service
NOTICES
Environmental statements; availability, etc.:
Dixie National Forest, UT, 59925
Lincoln National Forest, NM, 59926

General Services Administration
RULES
Federal property management:
Transportation and motor vehicles—
Interagency Fleet Management System; consolidation and restructuring, 59886

Health and Human Services Department
See Agency for Health Care Policy and Research; Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; National Institutes of Health

Health Care Financing Administration
PROPOSED RULES
Medicare:
Accrual basis of accounting policy; clarification
Correction, 59979

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Podiatric primary care residency training programs, 59953

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Contract rent annual adjustment factors, 59996
NOTICES
Agency information collection activities under OMB review; correction, 59979

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

International Development Cooperation Agency
See Agency for International Development

International Trade Commission
NOTICES
Import investigations:
Welded stainless steel pipes from Korea and Taiwan, 59961
Meetings; Sunshine Act, 59977
(2 documents)

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Cedar River Railroad Co., 59961

Justice Department
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Missing Children's Assistance Act; discretionary programs, 59982

Labor Department
See Employment and Training Administration

Land Management Bureau
PROPOSED RULES
Land resource management:
Land withdrawals—
Emergency withdrawals; withdrawn, 59914
NOTICES
Realty actions; sales, leases, etc.:
Montana; correction, 59979
Nevada; correction, 59957
Withdrawal and reservation of lands:
Wyoming; correction, 59979

Library of Congress
See Copyright Office, Library of Congress

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Lykes Bros. Steamship Co., Inc., 59970

National Commission on American Indian, Alaskan Native and Hawaiian Native Housing
NOTICES
Meetings, 59963
(2 documents)

National Highway Traffic Safety Administration
NOTICES
Highway safety program; breath alcohol testing devices:
Evidential devices; model specifications and conforming products list, 59971
Motor vehicle safety standards; exemption petitions, etc.:
Subaru of America, 59971

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Computer graphics metafile, 59928

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 59955
National Eye Institute, 59956
National Institute of Allergy and Infectious Diseases, 59956
National Institute of Child Health and Human Development, 59956
National Institute of Dental Research, 59956
National Library of Medicine, 59957
(3 documents)

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
South Atlantic snapper-grouper; correction, 59979
Western Pacific precious corals, 59894
Western Pacific Region pelagic, 59896
PROPOSED RULES
Fishery conservation and management:
Foreign fishing; fee schedule, 59920
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 59922
Gulf of Mexico reef fish, 59922
NOTICES
Meetings:
Western Pacific Fishery Management Council, 59930

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Rocky Mountain National Park, CO, 59959
National Register of Historic Places:
Pending nominations, 59959

Navy Department
NOTICES
Meetings:
Naval History Advisory Committee, 59931

Nuclear Regulatory Commission
PROPOSED RULES
Environmental protection; domestic licensing and related regulatory functions:
Nuclear power plants license renewal; environmental review requirements, 59898
NOTICES
Meetings; Sunshine Act, 59977
Applications, hearings, determinations, etc.:
Boston Edison Co., 59963
GPU Nuclear Corp. et al., 59964
Wolf Creek Nuclear Operating Corp., 59964

Office of United States Trade Representative
See Trade Representative, Office of United States

Panama Canal Commission
RULES
Organization, functions, and authority delegations:
Deputy Administrator et al.; information classification, safeguarding, etc., 59881

Personnel Management Office
NOTICES
Meetings:
Law Enforcement and Protective Occupations, Director's Advisory Committee, 59965

Presidential Documents
PROCLAMATIONS
Special observances:
Military Families Recognition Day, National (Proc. 6379), 59849
Thanksgiving Day (Proc. 6380), 60043

Prospective Payment Assessment Commission
NOTICES
Meetings, 59965

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health

Small Business Administration
PROPOSED RULES
Small business size standards:
Nonmanufacturer rule; waivers—
Four wheel utility trucks; correction, 59902

State Department
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 59965
Shipping Coordinating Committee, 59966

Surface Mining Reclamation and Enforcement Office
RULES
Bond and insurance requirements:
Surface coal mining and reclamation operations; bond release application requirements, 59992
PROPOSED RULES
Initial and permanent regulatory programs:
Surface coal mining and reclamation activities—
Explosives use; petition denied, 59904
Surface coal mining and reclamation operations and underground mining activities—
Temporary cessation of operations, 60012

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

Thrift Supervision Office
RULES
Administrative procedures:
Technical corrections, 59865

Trade Representative, Office of United States
NOTICES
Bulgaria and United States; trade relations agreement, effective date, 59965

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration; Maritime Administration; National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
Maritime Administrator, 59892

Treasury Department
See also Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 59972
(2 documents)
Meetings:
Customs Service Commercial Operations Advisory Committee, 59973

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Private non-profit organizations in support of international educational and cultural activities, 59973

Separate Parts In This Issue

Part II
Department of Justice, Juvenile Justice and Delinquency Prevention Office, 59982

Part III
Department of the Interior, Surface Mining Reclamation and Enforcement Office, 59992

Part IV
Department of Housing and Urban Development, 59996

Part V
Department of the Interior, Surface Mining Reclamation and Enforcement Office, 60012

Part VI
Department of Health and Human Services, Food and Drug Administration, 60024

Part VII
The President, 60043

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

6379.....59849
6380.....60043

7 CFR

1427.....59851

10 CFR

Proposed Rules:

51.....59898

12 CFR

203.....59853
505.....59865
509.....59865
545.....59865
552.....59865
563.....59865
563b.....59865

Proposed Rules:

932.....59898
1102.....59899

13 CFR

Proposed Rules:

121.....59902

14 CFR

39 (2 documents).....59867, 59868

Proposed Rules:

39.....59902

21 CFR

Proposed Rules:

803.....60024
807.....60024

24 CFR

888.....59996

30 CFR

800.....59992

Proposed Rules:

816 (2 documents).....59904, 60012
817.....60012

32 CFR

199 (2 documents).....59870, 59873

33 CFR

117.....59880

Proposed Rules:

207.....59913

35 CFR

60.....59881

37 CFR

201.....59884
202.....59884
203.....59884
204.....59884
211.....59884

40 CFR

60.....59886

41 CFR

101-39.....59886

42 CFR

Proposed Rules:

413.....59979

43 CFR

Proposed Rules:

2300.....59914

49 CFR

1.....59892
245.....59893

50 CFR

646.....59979
680.....59894
685.....59896

Proposed Rules:

17.....59917
611.....59920
641.....59922
672.....59922
675.....59922

Federal Register
Vol. 56, No. 228
Tuesday, November 26, 1991

Presidential Documents

Title 3—

The President

Proclamation 6379 of November 22, 1991

National Military Families Recognition Day, 1991

By the President of the United States of America

A Proclamation

We Americans take great pride in the vigilance, courage, and patriotism of the men and women who serve in our United States Armed Forces. Yet, in large part, the extraordinary spirit of our Nation's service members reflects that of the families who stand behind them. Thus, while we salute our troops for their outstanding efforts to preserve peace and to protect the vital interests of the United States, on this occasion we honor in a special way our Nation's military families. Each day, these Americans share in the hard work of freedom.

The military family is a very large and special one. It includes tens of thousands of wives, husbands, parents, siblings, and children. Located in every State and in countries around the globe, these families are the heart of the American defense community. They have stood together in times of trial and uncertainty; they have opened their arms to newcomers and to neighbors in need; and they have offered steady moral support to our forces stationed far from home. Brought together by the service of their loved ones, these families embody the love, faith, and devotion to freedom that have sustained our men and women in uniform, even through this Nation's darkest hours.

Whether they live on bases here at home or at posts in Europe, the Pacific, and elsewhere, military families are united by common experience—including the experience of hardship and sacrifice. For example, reassignments often require service members and their dependents to move, leaving behind schools, friends, and jobs. Although such moves may consist of relocation to unfamiliar towns or even to foreign lands, military families weather the challenges with perseverance and pride.

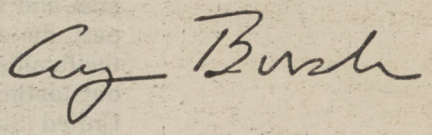
Because they recognize the risks that their loved ones have accepted in the line of duty, and because a service member's assignments can entail lengthy absences from home, military families also cope with long hours of separation and worry. During the past year, our Nation was reminded of all that military families have endured over the years when more than 500,000 service personnel were activated, both here and abroad, to take part in Operations Desert Shield and Desert Storm, as well as during U.S. humanitarian efforts in Operations Provide Comfort in northern Iraq and Sea Angel in Bangladesh. The stoicism and the patriotism displayed by America's military families during the conflict in the Persian Gulf uplifted and inspired our entire country. More recently, hundreds of American military families responded with exemplary courage and composure when they were evacuated from their homes in the Philippines following the eruption of Mount Pinatubo.

Throughout our Nation's history, military families have demonstrated their pride in service and their profound faith in the principles on which the United States is founded. Today we assure these Americans of our abiding gratitude, respect, and support.

The Congress, by House Joint Resolution 215, has designated November 25, 1991, as "National Military Families Recognition Day" and has authorized the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 25, 1991, as National Military Families Recognition Day. I urge all Americans to join in honoring America's military families on that day. Finally, I call upon Federal, State, and local officials, as well as concerned private organizations, to observe the day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, 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.



[FR Doc. 91-28563
Filed 11-22-91; 4:00 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 228
Tuesday, November 26, 1991

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

Upland Cotton Marketing Certificate Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with certain changes, the interim rule published in the **Federal Register** on August 21, 1991 (56 FR 41431). This final rule sets forth at 7 CFR part 1427 the regulations with respect to the upland cotton first handler and user marketing certificate programs as required by section 103B(a)(5)(B) and (E) of the Agricultural Act of 1949, as amended ("the 1949 Act").

EFFECTIVE DATE: August 21, 1991.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, room 3756–S, P.O. Box 2415, Washington, DC 20013 or call (202) 720–7954. The Final Regulatory Impact Analysis describing the options considered in developing this final rule is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this final rule applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

These programs/activities are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements contained in these regulations have been approved by OMB under the provisions of 44 U.S.C. chapter 35 through August 31, 1994, and assigned OMB No. 0560–0136. Changes made to the Upland Cotton First Handler Agreement and the Upland Cotton Domestic User/Exporter Agreement as a result of the final rule will be submitted to OMB for approval. Public reporting burden for the information collections contained in these regulations is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Statutory Background

The Food, Agriculture, Conservation, and Trade Act of 1990 ("the 1990 Act") amended the 1949 Act to provide that, if during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that the prevailing world market price for upland cotton, adjusted to United States quality and location ("adjusted world price") is less than the current loan repayment rate for a crop of upland cotton and that the cotton loan program and the loan deficiency payment program have failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments, in the form of commodity certificates, to eligible first handlers of upland cotton who have entered into an agreement with CCC to participate in the first handler marketing certificate program.

The 1990 Act also amended the 1949 Act by adding new provisions to provide that, if during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that, for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1 3/32 inch") cotton, delivered C.I.F. (cost, insurance and freight) northern Europe ("U.S. Northern Europe price") exceeds the Friday through Thursday average price quotation for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe ("Northern Europe price"), by more than 1.25 cents per pound each week, then CCC shall make payments, in the form of commodity certificates, to eligible domestic users and exporters of upland cotton on documented sales made in the week following such 4-week period.

This final rule amends 7 CFR part 1427 to set forth the terms and conditions of the upland cotton first handler marketing certificate program and the upland cotton user marketing certificate program. The changes made in this final rule from the interim rule are applicable to upland cotton consumed by domestic users and export contracts entered into by exporters on or after August 30, 1991.

Discussion of Comments and Changes

Twenty letters were timely received in response to the interim rule published in

the Federal Register on August 21, 1991, (56 FR 41431) requesting public comments on the interim regulations for implementing the upland cotton first handler and user marketing certificate programs. Responses were received from 10 exporters, 6 domestic users, one general cotton organization, one shippers association, one textile manufacturers association, and one cotton ginners association. Responses were received from persons located in 7 States and the District of Columbia.

Nineteen respondents commented on provisions of the user marketing certificate program. One respondent commented on the first handler marketing certificate program. Several comments were received which did not directly relate to the substance of the interim rule; rather, they related either to the Upland Cotton Domestic User/Exporter Agreement or to the operating instructions issued by CCC.

Changes in this final rule from the interim rule are based upon the public comments received. The Upland Cotton First Handler Agreement and the Upland Cotton Domestic User/Exporter Agreement will also be amended to incorporate the changes made in this final rule from the interim rule. The discussion of the comments received and the changes made that follow are organized in the same sequence as the final rule.

Section 1427.52 Definitions

One respondent commended CCC for including motes as eligible cotton under the first handler and user marketing certificate programs. The respondent, however, pointed out that typical reginning operations use anywhere from one to three stages of modified seed cotton cleaners, whereas, the definition of reginned (processed) motes requires them to use multiple stages. The respondent recommended that the definition be changed from "multiple" to "one or more." CCC agrees with this change and is amending the definition of reginned (processed) motes accordingly.

The same respondent also pointed out that the definition of semi-processed motes does not take into account those ginning operations that regin motes as an "in-line" process straight from the lint cleaner, bypassing initial cleaning and baling. These type operations do not produce a baled semi-processed mote, thus would be ineligible for first handler certificates. The respondent urged that appropriate language be added to the final rule to provide eligibility for these motes. CCC did not intend to exclude such motes from eligibility. Therefore, the definition of semi-processed motes is being revised by adding at the end thereof the words "or moved directly into the reginning process."

Section 1427.103 Eligible upland cotton

One respondent pointed out that some semi-processed motes do not need to be cleaned through lint cleaning equipment (sawtooth lint cleaning) in order to be suitable for spinning, papermaking or other traditional manufacturing uses. The respondent recommended that the definition of reginned (processed) motes be amended to delete the requirement that semi-processed motes be cleaned through one or more stages of lint cleaning equipment (sawtooth lint cleaning). This recommendation was not adopted because CCC believes that the majority of semi-processed motes need to be cleaned through one or more stages of lint cleaning equipment in order to be of a quality suitable for spinning, papermaking or other traditional manufacturing uses. However, CCC recognizes that some semi-processed motes are of a quality suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses. Therefore, § 1427.103(b) is being amended to provide eligibility for semi-processed motes which are suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses.

Four respondents recommended that upland cotton obtained with a certificate from CCC inventory be eligible for user marketing certificates. They based their recommendations on the following reasons:

1. Mills discount old crop cotton which would be in CCC inventory.

2. The cost to merchandise CCC cotton is higher because of the time delay in obtaining new samples, deterioration in grade and additional interest charges.

3. It is costly, difficult and time consuming to separate CCC inventory from general inventory.

4. The ineligibility of CCC inventory could make such cotton less attractive to potential buyers thus forcing CCC to carry the cotton for additional periods of time, thereby increasing the cost of the program.

5. Some mills are refusing to take any upland cotton not eligible for user marketing certificates.

CCC agrees that it would be more difficult to dispose of its inventory if such inventory obtained with certificates is not eligible for user marketing certificates. Therefore, the recommendation is being adopted and § 1427.103(c) is being amended accordingly.

One respondent recommended that motes blended with textile mill waste or other fibers not be eligible for user marketing certificates. This recommendation is adopted and § 1427.103(c) is being amended to exclude such blends from eligibility.

Section 1427.107 Payment rate

One respondent indicated that the provisions of the interim rule for determining the payment rate for domestic users and exporters provide foreign purchasers an advantage over domestic users. The respondent recommended that work begin now to establish regulations to permit the payment rate for domestic users to be determined at the time of price fixation beginning August 1, 1992, or earlier if possible. Another respondent recommended that the final rule be published expeditiously but that CCC agree now to revisit the regulations at a point in the near future, to judge whether they, in fact, are fully providing domestic users with competitively priced, domestically grown raw cotton. In addition, the respondent seeks a statement of willingness from CCC to amend the user marketing certificate program regulations, in the near future, to bring about competitively priced cotton, if the payment rate methodology and other aspects of the program do not provide U.S. mills with this opportunity. These recommendations do not affect the provisions of this final rule. CCC agrees to closely monitor the program as to its effectiveness and, if any changes in the regulations are deemed appropriate, it will propose changes in the regulations and seek public comment on those changes.

Four respondents recommended that user marketing certificate program payments to exporters either be eliminated or the regulations be amended to base the payment rate for exporters on the date the cotton is exported, rather than on the date the contract for export is entered into. The 1949 Act requires user marketing certificates to be issued to domestic users and exporters under specified price conditions. CCC does not have the authority to eliminate payments to exporters. CCC believes that the procedures in the interim rule for determining the payment rate for exporters will be more effective in keeping U.S. cotton priced competitively with foreign cotton than if the payment rate was based on the date of export. For these reasons, these recommendations are not being adopted.

Four respondents recommended that the payment rate for Below Grade (BG)

cotton be the same as the payment rate for other baled lint cotton. They based their recommendations on the following:

1. BG's are a small percentage of the total crop.
2. It is difficult to identify BG's.
3. Cotton is often sold without a class card.
4. Merchants often ship BG's on a contract with other cotton.
5. The administrative cost to CCC would be higher than the savings.

Because BG's are usually a very small percentage of the crop, CCC agrees that it would be a burden to the industry to keep BG's separate and that the administrative cost to CCC could be higher than the savings. For these reasons, § 1427.107(e) is being amended to delete Below Grade from the types of cotton for which the payment rate will be based on a percentage of the basic rate for baled lint.

In accordance with the decisions to include as eligible cotton semi-processed motes which are suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses and to base the payment rate for such motes on a percentage of the basic rate for baled lint, § 1427.107(e) is also being amended to add these motes to the types of cotton subject to a percentage reduction in the payment rate.

Section 1427.109 Contract cancellations

Six respondents recommended that the payment rate for contracts replacing canceled contracts or contracts which are amended to reduce the contract quantity be the payment established for the original contract. They state that cancellation and replacement of contracts are common practice and that exporters should not suffer a loss while accommodating the needs of a foreign purchaser. Also, contract disagreements are settled through arbitration based on market prices without regard to any Government subsidies. This recommendation is not adopted. CCC believes that the payment rate for replacement contracts should be the lesser of the payment rate established for the original contract or the payment rate in effect on the date of the replacement contract in order to prevent contract manipulations.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs (agriculture), Price support programs, Warehouses, Marketing certificate programs.

Accordingly, the interim rule published on August 21, 1991 (56 FR 41431), is adopted as final with the following changes:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.52 is amended by revising the definitions of "reginned (processed) motes" and "semi-processed motes" to read as follows:

§ 1427.52 Definitions.

* * * * *

Reginned (processed) motes means semi-processed motes which have been further cleaned through one or more stages of modified seed cotton cleaning and one or more stages of lint cleaning equipment (sawtooth lint cleaning) by the gin, an intermediate processor or an end user, which are of a quality suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses, and which have been rebaled, unless converted to an end use in a continuous manufacturing process by the end user who further cleaned the semi-processed motes.

Semi-processed motes means raw motes processed at the gin through one stage of modified seed cotton cleaning equipment, which have been baled, or moved directly into the reginning process.

3. Section 1427.103 is amended by removing the word "or" at the end of paragraph (b)(2), redesignating paragraph (b)(3) as (b)(4) and adding a new paragraph (b)(3) to read as follows:

§ 1427.103 Eligible upland cotton.

* * * * *

(b) * * *

(3) Semi-processed motes which are suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses; or

* * * * *

§ 1427.103 [Amended]

* * * * *

4. Section 1427.103 is amended by removing paragraph (c)(2), redesignating paragraphs (c)(3), (c)(4), (c)(5) and (c)(6) as (c)(2), (c)(3), (c)(4) and (c)(5), revising paragraph (c)(4) as redesignated, adding the word "or" at the end of paragraph (c)(5) as redesignated and adding a new paragraph (c)(6) to read as follows:

(c) * * *

(4) Semi-processed motes which are not of a quality suitable, without further processing, for spinning, papermaking, or other traditional manufacturing uses; or

* * * * *

(6) Semi-processed or reginned (processed) motes which have been blended with textile mill waste or other fibers.

5. Section 1427.107 is amended by revising paragraph (e) to read as follows:

§ 1427.107 Payment rate.

* * * * *

(e) Payment rates for loose, reginned motes and semi-processed motes which are suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

Signed at Washington, DC, on November 18, 1991.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–28401 Filed 11–21–91; 1:37 pm]

BILLING CODE 3410–05–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0736]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation C (Home Mortgage Disclosure), including the instructions and reporting form that financial institutions must use in complying with the annual reporting requirements. The major substantive change requires financial institutions to begin using 1990 census tract numbers (instead of 1980) to identify and report property locations beginning on January 1, 1992.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: W. Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544. For information regarding the Board's approval of the reporting form under the Paperwork Reduction Act only, contact Frederick J. Schroeder, Federal Reserve Board Clearing Officer, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3829, or Gary Waxman, OMB Desk Officer, Office of Information and

Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503, at 202–395–7340.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) made a number of significant amendments to HMDA. (Pub. L. No. 101–73, section 1211, 103 Stat. 183, 524–526.) These changes were reflected in amendments to Regulation C that took effect on January 1, 1990. (See 54 FR 51356, December 15, 1989.) The regulation requires depository and nondepository financial institutions that have over $10 million in assets and have offices in metropolitan statistical areas (MSAs) to disclose annually their originations and purchases of mortgage and home improvement loans, as well as applications they have received for such loans.

Under appendix A to the regulation, data must be recorded on a Loan/Application Register (HMDA–LAR) that reporting institutions must send to their regulatory agency no later than March 1 following the calendar year for which they are reporting. The Federal Financial Institutions Examination Council (FFIEC) compiles the HMDA data for each institution and then issues annual disclosure statements to the reporting institutions. Within 30 days after receiving their statements from the FFIEC, institutions must make them available to the public for inspection and copying at their home office and in at least one branch office in each MSA.

The FFIEC also compiles the HMDA data for all institutions in each MSA and sends aggregate reports to central data depositories located in each MSA.

In processing and reviewing the HMDA–LARs submitted by financial institutions for the 1990 calendar year (which was the first year reflecting the FIRREA amendments to HMDA), the Board and the other regulatory agencies (the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and Department of Housing and Urban Development) identified the need for certain changes to the instructions and form used in reporting HMDA data. The Board published a proposed rule in the **Federal Register** detailing these changes (56 FR 47703, September 20, 1991). This final rule incorporates many of the proposed changes, which will allow for the more efficient and accurate collection and submission of home mortgage data by financial institutions.

The final rules major change relates to census tract numbers. For loan applications received and actions taken on or after January 1, 1992, the regulation requires that financial institutions report property location using 1990 census tracts. The HMDA–LARs containing these new census data will be due to the supervisory agencies by March 1, 1993.

Institutions are reminded that for 1991 lending activity, they are required to use 1980 census tract numbers in reporting property location information on the HMDA–LARs; these HMDA–LARs are to be submitted to regulators by March 1, 1992.

Changing to 1990 census tracts will make the HMDA data more useful. Many of the output tables that comprise the disclosure statement rely on population and other characteristics for given census tracts (for example, composition of the tract by residents' income level, and age of housing stock). Because many changes have occurred since 1980, use of 1990 census tracts and demographics will produce more accurate and useful data in the HMDA disclosure statements and aggregate reports.

To ensure that institutions covered by HMDA are able to obtain the necessary materials to comply beginning January 1992, the HMDA supervisory agencies are working closely with the Bureau of the Census in seeking ways to expedite the distribution of census materials. These materials consist of: (1) An index of street addresses-census tract numbers, and (2) outline maps to locate properties not listed on the index. The maps are available now and the index will be available by year-end, both in automated and hard-copy form, from the Census Bureau. A direct mailing to all lenders that reported HMDA data for calendar year 1990 will inform them of the change to 1990 census tracts and will provide Census Bureau order forms for obtaining the necessary census materials.

(2) Revisions

This section describes the more significant changes that have been made to the regulatory provisions and instructions for completing the HMDA–LAR. Other changes are self-explanatory and are simply stylistic in nature. In addition, many of the headings and subheadings found in the instructions in appendix A have been redesignated.

Section 203.2 Definitions

203.2(c)(2)

The Board has made a technical change to subsection (c)(2) of the definition of branch office. A misspelling has been corrected to reflect that this subsection applies to mortgage lending institutions that take applications from the public for home "purchase" or home improvement loans—not home "purchases" as was previously stated.

203.2(e)(2)

The Board has revised subsection (e)(2) of the definition of financial institution to clarify that the loan volume used to determine coverage for nondepository mortgage lenders refers to loan *origination* volume. Thus, the test measures the percentage of an institution's home purchase loan originations against its total loan origination volume—not total loan volume.

Section 203.4 Compilation of Loan Data

203.4(a) Data format and itemization.

As addressed in the proposal, this section has been amended to reflect that home improvement loans that are refinanced are to be reported, as are refinancings of home purchase loans. (See also the revisions to the instructions at paragraph IV.A.1., below.)

Section 203.6 Enforcement

203.6(a) Administrative enforcement.

Given the importance of accurate and timely submissions of HMDA data, the Board has adopted the proposed language and has revised this section to make clear that civil money penalties are part of the administrative sanctions that section 305 of the Home Mortgage Disclosure Act authorizes for violations of HMDA reporting requirements.

Appendix A to Part 203—Form and Instructions for Completion of Loan/Application Register

I. Who Must File a Report

Paragraph C. In keeping with the revision to § 203.2(e)(2), the Board has revised paragraph C to read "total loan origination volume."

II. Required Format and Reporting Procedures

Paragraph A. Paragraph A has been revised to indicate that financial institutions generally are expected to submit their HMDA–LARs in automated format. In response to comments received, the Board has increased the

number of HMDA–LAR transactions qualifying for non-automated submission from 70 to 100. This paragraph also specifies that in the case of hard copy submissions, the two copies submitted must be typed, not handwritten.

Each of the agencies has issued technical specifications for the institutions they supervise to use in submitting HMDA data in automated form. Various vendor packages are available on the market for collecting HMDA data. To assist institutions that have not purchased or have not developed their own software program for data entry, several of the agencies provide software programs on PC diskettes, free of charge, that institutions may use for this purpose. For further information regarding automated submission, lenders should contact their HMDA supervisory agency.

IV. Types of Loans and Applications Covered and Excluded by HMDA

A. *Types of loans and applications to be reported.*

Paragraph 1. In keeping with the revisions to section 203.4(a) of the regulation, paragraph 1 has been revised to indicate that refinancings of home improvement loans are to be reported, as are refinancings of home purchase loans.

Paragraph 3. The Board has added language to the instructions concerning brokered loan applications and applications received through correspondent lenders. Given the frequency of questions received by the regulatory agencies, the Board has clarified reporting responsibilities for these types of transactions. Language has been added to remind reporters that the race or national origin, sex and income data—items required of most institutions when reporting the denial of applications—are required for these applications as well.

B. *Data to be excluded.*

Paragraph 1. The Board has amended the parenthetical language to provide a more straightforward example of a type of business-related loan that is not reported under HMDA.

V. Instructions for Completion of Loan/Application Register

A. *Application or loan information.*

1. *Application or loan number.*

In response to comments received on the proposal, the Board has decided against barring at this time the use of an applicant's name or social security number as part of the identification number. Commenters noted that many lenders' systems use this type of information internally to identify applications and loan accounts, and that implementing a different system for purposes of HMDA would be disruptive.

Nonetheless, because of privacy considerations, the Board and other agencies encourage reporters to refrain from using the names or social security numbers of borrowers or applicants in this manner. Though lenders are not required to release the HMDA–LAR data to persons other than their supervisory agencies, neither are they prohibited by Regulation C from doing so. There is, however, potential for damage or misuse resulting from the intentional or inadvertent release of this privacy-sensitive information by a financial institution. Thus, institutions should have appropriate safeguards to ensure that the sensitive data (application or loan number, date of application, and date of action taken) are not released to the public.

2. *Date application received.*

The Board had proposed adopting a uniform code of "0" (zero) to be used in this date field and in other fields on the HMDA–LAR whenever the correct entry is "not applicable." Although the Board believes that establishing a single code for this purpose would be beneficial in reducing errors, it appears that implementation of this change would cause an unwarranted disruption of established computer or automated reporting systems. Therefore, the Board has retained the existing codes for "not applicable" in this and other data fields.

5. *Explanation of purpose codes.*

Code 1: Home purchase.

Paragraph a. The Board has revised this paragraph, in line with the proposal, to indicate that a loan secured by a dwelling and made for the purpose of purchasing a second dwelling is subject to reporting under HMDA. The Board believes that these transactions, though relatively uncommon, are within the ambit of the statutory provisions that speak generally of the reporting of mortgage loans "secured by property" either within or outside an MSA. Paragraph V.C. of the instructions ("Property location") has similarly been changed.

Code 2: Home improvement.

Paragraph c. Language has been added to address the reporting of home equity lines of credit. Normally a home improvement loan must be reflected as a home improvement loan on an institution's records to be covered by HMDA; the new language clarifies that this particular requirement does not apply in the case of home equity lines of credit. In order to report a credit line, however, the lender must have determined that the applicant intends to use a portion of the line for home improvement purposes. The lender will report only that portion, not the entire line of credit. Paragraph c. has likewise been revised to make clear that a lender reporting originations must also report the disposition of applications for such home equity credit lines that do not result in originations (for example, denials).

Code 3: Refinancings.

Paragraph a. Paragraph a. has been revised to give guidance to lenders regarding a "refinancing"—the satisfaction of an existing obligation that is replaced by a new obligation. The language has been modified from that proposed to delete a reference to short-term balloon-payment loans. Instead, the Board has added language to specify that refinancings (regardless of the term of the borrower's previous obligation) are not reported on the HMDA–LAR if the lender is unconditionally obligated to refinance or renew the loan, or is obligated to refinance or renew it subject to conditions within the borrower's control.

Paragraph c. New language clarifies that lenders are to report a refinancing if the outstanding loan balance, plus any new funds earmarked by the consumer for home purchase or home improvement, exceed 50 percent of the total loan amount requested or approved.

8. *Loan amount.*

Paragraph 8. has been revised to make clear that loan amounts of less than $500 should not be reported. A number of commenters expressed interest in reporting such transactions. The Board believes, however, that a distortion in the data would result if institutions were permitted to "round up" to $1,000 application requests or loans of less than $500. Moreover, given the volume of data being reported, the Board does not find it feasible to have lenders report loan amounts in smaller increments than in thousands. The Board notes, however, that an institution that wants to make the full extent of its home improvement lending known in its community, for purposes of the Community Reinvestment Act, has the option of providing data about such lending as part of its CRA public file.

The Board has revised subparagraph c. to clarify that the loan amount reported for home equity credit lines should be only that portion earmarked by the applicant for home improvement regardless of the type of action taken (whether the application resulted in a loan origination or denial, for example.)

C. *Property location.*

Paragraph C. has been revised (in line with the changes adopted in paragraph V.A.5.) to cover instances in which a home purchase loan secured by one dwelling is made for the purpose of purchasing another dwelling. As was stated in the proposal, the geographic data generally should be recorded for the property in which the security interest is taken. However, if a home purchase loan is secured by both properties, the institution should report the geographic data for the property being purchased.

Note that, for reasons discussed above, the Board decided against requiring the use of the code "0" (zero) instead of "NA" for "not applicable," as had been proposed. Thus, institutions will continue to enter "NA" for instances in which a financial institution is not required to provide the property location.

Paragraphs 3. and 4. *Census tract* and *Census tract number.*

Revisions in paragraphs 3. and 4. require the use of 1990 census data to identify property locations beginning January 1, 1992. As discussed in the proposal, the 1980 census data are in many instances significantly out of date. The Board believes that moving to the 1990 census data is therefore essential given the need to provide greater accuracy and meaning to analyses performed using HMDA data. (The 1980 census tract numbers are still required on the HMDA–LARs for the 1991 reporting year, which are due to the supervisory agencies by March 1, 1992.)

The Board and the other supervisory agencies are working closely with the Bureau of the Census to ensure that institutions can obtain the appropriate 1990 census tract materials in time for use in 1992. A direct mailing to all lenders that reported HMDA data for calendar year 1990 will inform them of the change to 1990 census tracts and will provide order forms for obtaining the necessary census materials from the Census Bureau.

6. *Nondepository lenders.*

A new paragraph has been added to alert nondepository institutions of the need to monitor loan activity within MSAs. The statute and regulation provide that a nondepository mortgage lender is deemed to have a branch office in any MSA where it received five or more loan applications, or originated or purchased five or more home purchase or home improvement loans, during the *preceding* calendar year. This means that, to establish its compliance with this "five or more loan" rule, an institution must have kept complete records on the geographic distribution of its lending activity for the previous calendar year. Nondepository mortgage lenders may find it easier, and are encouraged, to give the property location data for all loans relating to property located within any MSA. In that way they can be assured of being in compliance with the regulation.

D. *Applicant information—race or national origin, sex and income.*

5. *Income.*

The Board has amended this paragraph to clarify that institutions must report the total amount of the gross annual income (of the applicant and any co-applicant) that they rely on in making their credit decision. Monthly or net income figures are not to be entered in this column.

E. *Type of purchaser.*

Paragraph 1. Institutions will continue to use code "0" in situations where a loan is originated or purchased but not sold in the calendar year covered by the report. As the revision to this paragraph makes clear, lenders should also use this code whenever the action taken on an application is something other than an origination (for example, a loan denial).

F. *Reasons for denial.*

Paragraph 2. This paragraph has been revised to make clear that the "reasons for denial" column should be left blank if the action taken was anything other than a loan denial.

In processing the 1990 data, the agencies noted apparent confusion among some reporters concerning the similarity of terms relating to incompleteness. Code 5 under the "Action Taken" column is entitled "file closed for incompleteness." When Code 5 is used to describe the action taken, the reasons for denial column must be left blank.

Code 5 under "Action Taken" applies to a transaction in which the financial institution has requested additional information from the applicant pursuant to section 202.9(c) of Regulation B (Equal Credit Opportunity, 12 CFR 202 *et seq.*), has given the applicant time to respond, and has not received the information within the time specified. In contrast, code 7 under reasons for denial (phrased "credit application incomplete") applies when a loan application has been denied outright by the financial institution because the required credit materials were not complete. Thus, code 7 may only be used when code 3, "application denied by financial institution," has been entered in the action taken column.

Loan/Application Register Transmittal Sheet, Loan/Application Register, and Loan/Application Register Code Sheet

In addition to minor editorial changes, the Board has revised the transmittal sheet that accompanies an institution's data submission to require that institutions supply their tax identification number. This information will assist the agencies in identifying any duplicate submissions among covered institutions. The change takes effect with the transmittal sheet that will accompany the 1992 reports to be submitted in 1993.

The Loan/Application Register has been reformatted to illustrate more clearly the information that lenders must provide. These editorial and technical changes should help reduce data entry errors. Text has been added to the top of the form advising reporters that "All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details." This addition will alert financial institutions of the need to consult the instructions before attempting to complete entries on the register, and to leave no columns blank (with the possible exception of the reasons for denial).

The income column under the "Applicant Information" heading has been relabeled "Gross Annual Income in thousands," to avoid a problem that was encountered in the reporting of 1990 data, whereby some lenders mistakenly reported monthly income.

As discussed elsewhere, the Board decided against the adopting of a uniform code for the response "not applicable." Thus, institutions must refer to the codes listed on the code sheet and in the instructions to determine the applicable code for each column.

(3) Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35, and 5 CFR 1320.13, the revisions to Regulation C that relate to reporting requirements were approved under authority delegated to the Board by the Office of Management and Budget. The Board has determined that the revisions do not significantly increase the burden on the reporting institutions. However, the burden hours have been adjusted to reflect the actual number of covered lenders supervised by the Federal Reserve and the loan transactions they reported for the 1990 calendar year.

The following information relates only to the effect of the reporting requirements on state member banks and mortgage banking subsidiaries that are supervised by the Federal Reserve. As indicated elsewhere in this notice, the Board's Regulation C applies to all depository and nondepository mortgage lenders that had an office in a metropolitan statistical area and had

assets of more than $10 million on the preceding December 31.

Institutions other than state member banks are supervised by other federal agencies: the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, and Department of Housing and Urban Development. For purposes of the Paperwork Reduction Act, these agencies report their own estimates of the paperwork burden imposed by the HMDA reporting requirements.

Approval Under OMB Delegated Authority for the Following Information Collection:

Report title: HMDA Loan/Application Register.

Agency form number: FR HMDA–LAR.

OMB docket number: 7100–0247.

Reporters: State member banks and mortgage banking subsidiaries of bank holding companies.

Reporters	Number of respond-ents	Frequency	Avg. hours per response
State member banks.	486	Annually	50
Mortgage banking subsidiaries.	125	Annually	850

Annual reporting hours: 130,550.

Small businesses are not affected.

General description of report. This information collection is mandatory (12 U.S.C. 2801–2810, 12 CFR Part 203). The report collects information on applications for, and originations and purchases of, home purchase and home improvement loans, as discussed elsewhere in this notice. State member banks and mortgage banking subsidiaries of bank holding companies are required to complete the HMDA Loan/Application Register for a given calendar year and to send it to the Federal Reserve System by March 1 of the following calendar year. Other lending institutions submit their data through their respective federal supervisory agencies, with the exception of state chartered institutions in Connecticut and Massachusetts, which submit data through their state banking agencies.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

(4) Text of Revisions

Because few changes to the regulation itself have been made, the Board is publishing only those regulatory sections that have been affected. Appendix A (which contains the instructions and the HMDA reporting form), on the other hand, is published in its entirety following the regulatory provisions. Appendix B (which contains the form and instructions for data collection on race or national origin and sex) is not being republished, as no changes were made to those items.

For the reasons set forth in this notice and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board amends part 203, Home Mortgage Disclosure (12 CFR part 203) and the form and instructions thereto (Appendix A to part 203) as follows:

PART 203—HOME MORTGAGE DISCLOSURE

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

Authority: 12 U.S.C. 2801–2810.

2. Section 203.2 has been amended by revising the first sentence of paragraph (c)(2) and paragraph (e)(2) to read as follows:

§ 203.2 Definitions.

* * * * *

(c) *Branch office* means:

* * * * *

(2) Any office of a mortgage lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase or home improvement loans.

* * *

* * * * *

(e) *Financial institution* means:

* * * * *

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) whose home purchase loan originations equaled or exceeded ten percent of its loan origination volume, measured in dollars, in the preceding calendar year.

* * * * *

3. Section 203.4(a) has been revised to read as follows:

§ 203.4 Compilation of loan data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase and home improvement loans (including refinancings of both) for each calendar year. These data shall be presented on a register in the format prescribed in appendix A and shall include the following items:

* * * * *

4. Section 203.6(a) has been revised to read as follows:

§ 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act, including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in Appendix A of this regulation.

* * * * *

5. Appendix A to part 203 has been revised to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

Paperwork Reduction Act Notice

Public reporting burden for collection of this information is estimated to vary from 10 to 10,000 hours per response, with an average of 200 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Who Must File a Report

A. Subject to the exceptions discussed below, banks, savings associations, credit unions, and other mortgage lending institutions must complete a register listing data about loan applications received, loans originated, and loans purchased if on the preceding December 31 an institution:

1. Had assets of more than $10 million, and

2. Had a home or a branch office in a "metropolitan statistical area" or a "primary metropolitan statistical area" (both are referred to in these instructions by the term "MSA").

Example: If on December 31 you had a home or a branch office in an MSA and your assets exceeded $10 million, you must complete a register that lists the home purchase and home improvement loans that you originate or purchase (and also lists applications that did not result in an origination) beginning January 1.

B. You need not complete a register—even if you meet the tests for asset size and location—if your institution is a bank, savings association, or credit union that made no first-lien home purchase loans on one-to-four family dwellings in the preceding calendar year. This exception does not apply in the case of nondepository institutions.

C. You need not complete a register—even if you meet the tests for asset size and location—if your institution is a for-profit

mortgage lender (other than a bank, savings association, or credit union) and the home purchase loans that you originated in the preceding calendar year came to less than 10 percent of your total loan origination volume, measured in dollars.

D. If you are a for-profit mortgage lender (other than a bank, savings association, or credit union) the asset test is based on the combined assets of your institution and any parent corporation.

E. If you are the subsidiary of a bank or savings association you must complete a separate register for your institution. You will submit the register, directly or through your parent, to the agency that supervises your parent. (See paragraph VI.)

F. Institutions that are specifically exempted by the Federal Reserve Board from complying with the federal Home Mortgage Disclosure Act because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law and submit the data to their state supervisory agency.

II. Required Format and Reporting Procedures

A. Institutions are expected to submit data to their supervisory agencies in an automated, machine-readable form unless 100 or fewer application and loan entries are reported. The format must conform exactly to the form FR HMDA–LAR, including the order of columns, column headings, etc. Contact your federal supervisory agency for information regarding procedures and technical specifications for automated data submission. An institution that submits its register in nonautomated form must send two copies that are typed or computer printed. You must use the format of the loan/application register, but are not required to use the form itself. Each page must be numbered, and the total number of pages must be given (for example, "Page 1 of 3").

B. The required data are to be entered in the register for each loan origination, each application acted on, and each loan purchased during the calendar year. Your institution should decide on the procedure it wants to follow—for example, whether to begin entering the required data when an application is received, or to wait until final action is taken (such as when a loan goes to closing or an application is denied). Keep in mind that an application is to be reported in the calendar year when final action is taken. Report loan originations in the year they go to closing; if an application has been approved but has not yet gone to closing at year-end, report it the following year.

C. Your institution may collect the data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). But make sure the application or loan numbers (discussed under paragraph V.A.1., below) are unique.

D. Entries need not be grouped on your register by MSA, or chronologically, or by census tract numbers, or in any other particular order.

III. Submission of HMDA–LAR and Release of Disclosure Statements

A. You must submit the data for your institution to the office specified by your supervisory agency no later than March 1 following the calendar year for which the data are compiled. A list of the agencies appears at the end of these instructions.

B. You must submit all required data to your supervisory agency in one complete package, with the prescribed transmittal sheet. An officer of your institution must certify to the accuracy of the data.

C. You are encouraged to provide in a cover letter an approximate count of the total number of line entries contained in your data submission. If you are a depository institution, you also are asked to include a list of the MSAs where you have a home or branch office.

D. The Federal Financial Institution Examination Council (FFIEC) will prepare a disclosure statement from the data you submit. Your disclosure statement will be returned to the name and address indicated on the transmittal sheet. When you receive that disclosure statement you must make a copy available for inspection by the public within 30 calendar days of the date the statement is received by your institution. You must make a complete copy available at your home office. If you have physical branch offices in other MSAs, you must make available, at one branch office in each of those MSAs, either the complete statement or the portion of the statement relating to that MSA.

Your agency can provide you with HMDA posters that you can use to inform the public of the availability of your disclosure statement, or you may print your own posters.

IV. Types of Loans and Applications Covered and Excluded by HMDA

A. Types of loans and applications to be reported.

1. Report the data on home purchase and home improvement loans that you originated (that is, loans that were closed in your name) and loans that you purchased during the calendar year covered by the report. Report these data even if the loans were subsequently sold by your institution. Include refinancings of home purchase and home improvement loans.

2. Report the data for applications for home purchase and home improvement loans that did not result in originations—for example, applications that your institution denied or that the applicant withdrew during the calendar year covered by the report.

3. In the case of brokered loan applications or applications forwarded to you through a correspondent, show the data for all applications denied by your institution (whether or not they would have closed in your institution's name). Report the race or national origin, sex, and income information, unless your institution is a bank, savings association or credit union with assets of $30 million or less on the preceding December 31.

4. Report applications that were received in the previous calendar year but were acted upon during the calendar year covered by the current register.

B. Data To Be Excluded

Do not report loans or applications for loans of the following types:

1. Loans that, although secured by real estate, are made for purposes other than home purchase, home improvement, or refinancing (for example, do not report a loan secured by residential real property for purposes of financing college tuition, a vacation, or goods for business inventory).

2. Loans made in a fiduciary capacity (for example, by your trust department).

3. Loans on unimproved land.

4. Construction or bridge loans and other temporary financing.

5. The purchase of an interest in a pool of loans (such as mortgage-participation certificates).

6. The purchase solely of the right to service loans.

V. Instructions for Completion of Loan/Application Register

A. Application or Loan Information

1. *Application or loan number.* Enter an identifying number that can be used later to retrieve the loan or application file. It can be any number of your choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both.

Make sure that all numbers are unique within your institution. If your register contains data for branch offices, for example, you could use a letter or a numerical code to identify the loans or applications of different branches, or could assign a certain series of numbers to particular branches to avoid duplicate numbers. You are strongly encouraged not to use the applicant's or borrower's name or social security number, for privacy reasons.

2. *Date application received.* Enter the date the loan application was received by your institution by month, day, and year, using numerals in the form MM/DD/YY (for example, 01/15/92). If your institution normally records the date shown on the application form, you may use that date instead. Enter "NA" for loans purchased by your institution.

3. *Type.* Indicate the type of loan or application by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA or FmHA loans)
2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans Administration)
4—FmHA-insured (Farmers Home Administration)

4. *Purpose.* Indicate the purpose of the loan or application by entering the applicable code from the following:

1—Home purchase (one-to-four family)
2—Home improvement (one-to-four family)
3—Refinancing (home purchase or home improvement, one-to-four family)
4—Multifamily dwelling (home purchase, home improvement, and refinancings)

5. *Explanation of purpose codes.*

Code 1: Home purchase.

a. This code applies to loans and applications made for the purpose of purchasing a residential dwelling for one to

four families, if the loan is to be secured by the dwelling being purchased or by another dwelling.

b. At your option, you may use code 1 for loans that are made for home improvement purposes but are secured by a first lien, if you normally classify such first-lien loans as home purchase loans.

Code 2: Home improvement.

a. Code 2 applies to loans and applications for loans that (1) the borrowers have said will be used for repairing, rehabilitating, or remodeling one-to-four family residential dwellings, and (2) are recorded on your books as home improvement loans.

b. Report both secured and unsecured loans.

c. At your option, you may report data about home equity lines of credit—even if the credit line is not recorded on your institution's books as a home improvement loan. If you choose to do so, you may report a home equity line of credit as a home improvement loan if the borrower or applicant indicates, at the time of application or when the account is opened, that some portion of the proceeds will be used for home improvement. (See Paragraph 8. "Loan amount," below.) If you report originations of home equity lines of credit, you must also report applications for such loans that did not result in originations.

Code 3: Refinancings.

a. Use this code for refinancings (and applications for refinancings) of home purchase or home improvement loans on one-to-four family residential dwellings. A refinancing involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower. But do not report a refinancing if, under the loan agreement, you are unconditionally obligated to renew or refinance the obligation, or you are obligated to renew or refinance the obligation subject to conditions within the borrower's control.

b. Use this code whether or not you were the original creditor on the loan being refinanced, and whether or not the refinancing involves an increase in the outstanding principal.

c. Report a refinancing if the amount outstanding on the original loan, plus the amount of new money (if any) that is for home purchase or home improvement purposes, is more than 50 percent of the total new loan amount. Do not report a refinancing if 50 percent or less of the loan proceeds or the amount applied for is for home purchase or home improvement.

Code 4: Multifamily dwelling.

a. Use this code for loans and loan applications on dwellings for five or more families, including home purchase loans, refinancings, and loans for repairing, rehabilitation, and remodeling purposes.

b. Do not use this code for loans on individual condominium or cooperative units; use codes 1, 2, or 3 for such loans, as applicable.

6. *Owner occupancy.* Indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal dwelling by entering the applicable code from the following:

1—Owner-occupied as a principal dwelling
2—Not owner-occupied
3—Not applicable

7. Explanation of codes.

a. Use code 2 for second homes or vacation homes, as well as rental properties.

b. Use code 2 only for nonoccupant loans, or applications for nonoccupant loans, related to one-to-four family dwellings (including individual condominium or cooperative units).

c. Use code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA in which your institution has neither a home nor a branch office.

d. For purchased loans, you may assume that the property will be owner-occupied as a principal dwelling (code 1) unless the loan documents or application contain information to the contrary.

8. *Loan amount.* Enter the amount of the loan or application. Do not report loans below $500. Show the amount in thousands rounding to the nearest thousand ($500 should be rounded up to the next $1,000). For example, a loan for $167,300 should be entered as 167 and one for $15,500 as 16.

a. For home purchase loans that you originate, enter the principal amount of the loan as the loan amount. For home purchase loans that you purchase, enter the unpaid principal balance of the loan at the time of purchase as the loan amount.

b. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the loan amount if that is how you record such loans on your books.

c. For home equity lines of credit (if you have chosen to report them), enter as the loan amount only that portion of the line that the applicant or borrower has indicated, at the time the application is made or when the account is opened, as being for home improvement. Report the loan amount for applications that did not result in originations in the same manner. Report only in the year the line is established.

d. For refinancings that are to be reported, indicate the total amount of the refinancing, including the amount outstanding on the original loan and the amount of new money (if any).

e. For a loan application that was denied or withdrawn, enter the amount applied for.

f. If you offered to lend less than the applicant applied for, enter the amount of the loan if the offer was accepted by the applicant. If the offer was not accepted, enter the amount that the applicant applied for.

B. Action taken

1. *Type of action.* Indicate the type of action taken on the application or loan by using one of the following codes. Do not report any loan application still pending at the end of the calendar year. You will report that application on your register for the year in which final action is taken.

1—Loan originated
2—Application approved but not accepted by applicant
3—Application denied
4—Application withdrawn
5—File closed for incompleteness
6—Loan purchased by your institution

2. *Explanation of codes.*

a. Use code 2 when an application is approved but the applicant fails to respond to your notification of approval or your commitment letter within the specified time.

b. Use code 4 only when an application is expressly withdrawn by the applicant before a credit decision was made.

c. Use code 5 if you sent a written notice of incompleteness under section 202.9(c)(2) of Regulation B (Equal Credit Opportunity) and the applicant failed to respond to your request for additional information within the period of time specified in your notice.

3. *Date of action.* Enter the date by month, day, and year, using numerals in the form MM/DD/YY (for example, 02/22/92).

a. For loans originated, enter the settlement or closing date. For loans purchased, enter the date of purchase by your institution.

b. For applications denied, applications approved but not accepted by the applicant, and files closed for incompleteness, enter the date that the action was taken by your institution or the date the notice was sent to the applicant.

c. For applications withdrawn, enter the date you received the applicant's express withdrawal; or you may enter the date shown on the notification from the applicant, in the case of a written withdrawal.

C. *Property location.* In these columns enter the applicable codes for the MSA, state, county, and census tract for the property to which a loan relates. For home purchase loans secured by one dwelling, but made for the purpose of purchasing another dwelling, report the property location for the property in which the security interest is to be taken. If the home purchase loan is secured by more than one property, report the location data for the property being purchased. (See paragraphs 5. and 6. below for treatment of loans on property outside the MSAs in which you have offices.)

1. *MSA.* For each loan or loan application, indicate the location of the property by the MSA number. Enter only the MSA number, not the MSA name. MSA boundaries are defined by the U.S. Office of Management and Budget; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency or the FFIEC. (In these instructions, the term MSA refers to both metropolitan statistical area and primary metropolitan statistical area.)

2. *State and county.* You must use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency or the FFIEC. Do not use the letter abbreviations used by the U.S. Postal Service.

3. *Census tract.* Indicate the census tract where the property is located.

a. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph 4. below).

b. If the property is located in a county with a population of 30,000 or less in the 1990 census (as de ermined by the Census

Bureau's 1990 CPH–2 population series), enter "NA" (even if the population has increased above 30,000 since 1990), or you may enter the census tract number.

4. *Census tract number.* For the census tract number, consult the U.S. Census Bureau's Census Tract/Street Index for 1990, and for addresses not listed in the index, consult the Census Bureau's census tract outline maps. You must use the maps from the Census Bureau's 1990 CPH–3 series, or equivalent 1990 census data from the Census Bureau (such as the Census TIGER/Line File) or from a private publisher.

5. *Outside-MSA.* For loans on property located outside the MSAs in which you have a home or branch office (or outside any MSA), you may enter the MSA, state, county, and census tract numbers or you may enter the code "NA" in each of these columns.

6. *Nondepository lenders.* If you are a for-profit mortgage lending institution (other than a bank, savings association, or credit union), and in the preceding calendar year you received applications for, or originated or purchased, loans for home purchase or home improvement adding up to a total of five or more for a given MSA, you are deemed to have a branch office in that MSA, whether or not you have a physical office there. As a result, you will have to enter the MSA, state, county, and census tract numbers for any transactions in that MSA. Because you must keep accurate records about lending within MSAs in the current calendar year in order to report data accurately the following year, to comply with this rule you may find it easier to enter the geographic information routinely for any property located within any MSA.

D. *Applicant information—race or national orioin, sex, and income.* Appendix B of Regulation C contains instructions for the collection of data on race or national origin and sex, and also contains a sample form for data collection. The form is substantially similar to the form prescribed by § 202.13 of Regulation B (Equal Credit Opportunity) and contained in Appendix B to that regulation. You may use either form.

1. *Applicability.* You must report this applicant information for loans that you originate as well as for applications that do not result in an origination.

a. You need not collect or report this information for loans purchased. If you choose not to, enter the codes specified in paragraphs 3., 4., and 5. below for "not applicable."

b. If your institution is a bank, savings association, or credit union that had assets of $30 million or less on the preceding December 31, you may—but need not—collect and report these data. If you choose not to, enter the codes specified in paragraphs 3., 4., and 5. below for "not applicable."

c. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the codes specified in paragraphs 3., 4., and 5. below for "not applicable."

2. *Mail and telephone applications.* Any loan applications mailed to applicants must contain a collection form similar to that shown in Appendix B, and you must record on your register the data on race or national origin and sex if the applicant provides it. If the applicant chooses not to provide the data, enter the code for "information not provided by applicant in mail or telephone application" specified in paragraphs 3. and 4. below. If an application is taken entirely by telephone, you need not request this information. (See Appendix B for complete information on the collection of this data in mail or telephone applications.)

3. *Race or national origin of borrower or applicant.* Use the following codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, enter code 8 for "not applicable" in the coapplicant column.

1—American Indian or Alaskan Native
2—Asian or Pacific Islander
3—Black
4—Hispanic
5—White
6—Other
7—Information not provided by applicant in mail or telephone application
8—Not applicable

4. *Sex of borrower or applicant.* Use the following codes to indicate the sex of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form. If there are no co-applicants or co-borrowers, enter code 4 for "not applicable."

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable

5. *Income.* Enter the gross annual income that your institution relied upon in making the credit decision.

a. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in terms of thousands. For example, $35,500 should be reported as 36.

b. For loans on multifamily dwellings, enter "NA."

c. If no income information is asked for or relied on in the credit decision (such as in "no income verification" type loans), enter "NA."

E. Type of Purchaser

1. Enter the applicable code to indicate whether a loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

0—Loan was not originated or was not sold in calendar year covered by register
1—FNMA (Federal National Mortgage Association)
2—GNMA (Government National Mortgage Association)
3—FHLMC (Federal Home Loan Mortgage Corporation)
4—FmHA (Farmers Home Administration)
5—Commercial bank
6—Savings bank or savings association
7—Life insurance company
8—Affiliate institution
9—Other type of purchaser

2. *Explanation of codes.* a. Enter the code 0 for applications that were denied, withdrawn, or approved but not accepted by the applicant; and for files closed for incompleteness.

b. If you originated or purchased a loan and did not sell it during that same calendar year, enter the code 0. If you sell the loan in a succeeding year, you need not report the sale.

c. If you conditionally assign a loan to GNMA in connection with a mortgage-backed security transaction, use code 2.

d. Loans "swapped" for mortgage-backed securities are to be treated as sales; enter the type of entity receiving the loans that are swapped as the purchaser.

e. Use code 8 for loans sold to an institution affiliated with you, such as your subsidiary or a subsidiary of your parent corporation.

F. Reasons for Denial

1. You are not required to enter the reasons for the denial of an application. But if you choose to do so, you may indicate up to three reasons by using the following codes:

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

2. Leave this column blank if the "action taken" on the application is not a denial. For example, do not complete this column if the application was withdrawn or the file was closed for incompleteness.

3. If your institution uses the model form for adverse action contained in the appendix to Regulation B (Form C–1 in Appendix C, Sample Notification Form, which offers some 20 reasons for denial), the following list shows which codes to enter.

a. *Code 1 corresponds to:* Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. *Code 2 corresponds to:* Temporary or irregular employment, and Length of employment.

c. *Code 3 corresponds to:* Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us, Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. *Code 4 corresponds to:* Value or type of collateral not sufficient.

e. *Code 6 corresponds to:* Unable to verify credit references, Unable to verify employment, Unable to verify income, and Unable to verify residence.

f. *Code 7 corresponds to:* Credit applicatio incomplete.

g. *Code 9 corresponds to:* Length of residence, Temporary residence, and Other reasons specified on notice.

VI. Federal Supervisory Agencies

Send your loan/application register and direct any questions to the office of your federal supervisory agency as specified below. If you are the nondepository subsidiary of a bank, savings association, or credit union, send the register to the supervisory agency for your parent institution.

A. *National banks and their subsidiaries.* District office of the Office of the Comptroller of the Currency supervising the national bank.

B. *State member banks of the Federal Reserve System, their subsidiaries, and subsidiaries of bank holding companies.* Federal Reserve Bank serving the district in which the state member bank is located; for institutions other than state member banks, the Federal Reserve Bank specified by the Board of Governors.

C. *Nonmember insured banks (except for federal savings banks) and their subsidiaries.* Regional Director of the Federal Deposit Insurance Corporation for the region in which the bank or the subsidiary is located.

D. *Savings institutions insured under the Savings Association Insurance Fund of the FDIC, federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund), their subsidiaries, and subsidiaries of savings institution holding companies.* Regional or other office specified by the Office of Thrift Supervision.

E. *Credit unions.* National Credit Union Administration, Office of Examination and Insurance, 1776 G Street, NW., Washington, DC 20456.

F. *Other depository institutions.* Regional Director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

G. *Other mortgage lending institutions.* Assistant Secretary for Housing, HMDA Reporting—Room 9233, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

By order of the Board of Governors of the Federal Reserve System, November 20, 1991.

William W. Wiles,

Secretary of the Board.

BILLING CODE 6210-01-M

Form FR HMDA-LAR
OMB No. 7100-0247. Approval expires December 31, 1992
Hours per response: 10 to 10,000 (200 average)
This report is required by law (12 USC 2801-2810 and 12 CFR 203)

LOAN/APPLICATION REGISTER

TRANSMITTAL SHEET

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

Reporter's Identification Number | Agency Code

[| | | | | | | | | |] - [ ]

Reporter's Tax Identification Number

[| |] - [| | | | | | |]

The Loan/Application Register that is attached covers activity during 19_____ and contains a total of _____ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

_____
Name of Institution

_____
Address

_____
City, State, ZIP

Enter the name and telephone number of a person who may be contacted about questions regarding your register:

_____ ( ) _____
Name Telephone Number

If your institution is a subsidiary of another institution or corporation, enter the name of your parent:

_____
Name

_____
Address

_____
City, State, ZIP

Ente the name and address of your supervisory agency (or your parent's supervisory agency):

_____
Name

_____
Address

_____
City, State, ZIP

An officer of your institution must complete the following section.

I certify to the accuracy of the data contained in this register.

_____ _____ _____
Name of officer Signature Date

LOAN/APPLICATION REGISTER Page ____ of ____

Form FR HMDA-LAR

Name of Reporting Institution _____ City, State, ZIP _____

Reporter's Identification Number _____ Agency Code _____

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details.

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant						
												Race or National Origin		Sex				
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Owner Occupancy	Loan amount in thousands	Type	Date (mm/dd/yy)	Four-Digit MSA Number	Two-Digit State Code	Three-Digit County Code	Six-Digit Census Tract	A	CA	A	CA	Gross Annual Income in thousands	Type of Purchaser of Loan	Reasons for Denial (Optional)
Example of Loan Originated																		
LB-687439	01/15/92	2	1	1	65	1	02/22/92	8840	51	059	421985	3	8	1	4	24	7	
Example of Application Denied																		
0123456789-9876543210	03/20/92	1	1	1	125	3	04/30/92	0450	01	015	0021-00	5	4	2	1	55	0	415

- 40 -

[Actual Size: 8-1/2" x 14"]

LOAN/APPLICATION REGISTER CODE SHEET

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA-LAR explain the proper use of each code.

Application or Loan Information

Type:

1 -- Conventional (any loan other than FHA, VA or FmHA loans)
2 -- FHA-insured (Federal Housing Administration)
3 -- VA-guaranteed (Veterans Administration)
4 -- FmHA-insured (Farmers Home Administration)

Purpose:

1 -- Home purchase (one-to-four family)
2 -- Home improvement (one-to-four family)
3 -- Refinancing (home purchase or home improvement, one-to-four family)
4 -- Multifamily dwelling (home purchase, home improvement, and refinancings)

Owner-Occupancy:

1 -- Owner-occupied as a principal dwelling
2 -- Not owner-occupied
3 -- Not applicable

Action Taken:

1 -- Loan originated
2 -- Application approved but not accepted by applicant
3 -- Application denied by financial institution
4 -- Application withdrawn by applicant
5 -- File closed for incompleteness
6 -- Loan purchased by your institution

Applicant Information

Race or National Origin:

1 -- American Indian or Alaskan Native
2 -- Asian or Pacific Islander
3 -- Black
4 -- Hispanic
5 -- White
6 -- Other
7 -- Information not provided by applicant in mail or telephone application
8 -- Not applicable

Sex:

1 -- Male
2 -- Female
3 -- Information not provided by applicant in mail or telephone application
4 -- Not applicable

Type of Purchaser

0-- Loan was not originated or was not sold in calendar year covered by register
1 -- FNMA (Federal National Mortgage Association)
2 -- GNMA (Government National Mortgage Association)
3 -- FHLMC (Federal Home Loan Mortgage Corporation)
4 -- FmHA (Farmers Home Administration)
5 -- Commercial bank
6 -- Savings bank or savings association
7 -- Life insurance company
8 -- Affiliate institution
9 -- Other type of purchaser

Reasons for Denial (optional)

1 -- Debt-to-income ratio
2 -- Employment history
3 -- Credit history
4 -- Collateral
5 -- Insufficient cash (downpayment, closing costs)
6 -- Unverifiable information
7 -- Credit application incomplete
8 -- Mortgage insurance denied
9 -- Other

[FR Doc. 91-28336 Filed 11-25-91; 8:45 am]
BILLING CODE 6210-01-C

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 505, 509, 545, 552, 563, and 563b

[No. 91-657]

Technical Corrections

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Thrift Supervision ("OTS") is making technical corrections to its demand deposit account regulations, its uniform hearing rules, its organizational regulations for Federal stock associations, the instructions to its annual report ("Form AR"), its regulations concerning indemnification of directors and officers, and its conversion regulations to correct typographical errors.

The OTS's Freedom of Information Act regulations are being amended to include current addresses. The OTS is also removing its equity risk investment rule, which expired on July 13, 1990, and a cross-reference to the rule in its securities issued through subsidiaries regulation. In addition, the OTS's conflicts rules are being amended to correct an erroneous cross-reference.

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Paralegal Specialist, (202) 906-7135, Chief Counsel's Office, Regulations & Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552.

SUPPLEMENTARY INFORMATION: By this action, the OTS is making technical corrections to a number of its regulations.

12 CFR 505.2 through 505.4 contain addresses at which various materials may be obtained pursuant to the Freedom of Information Act ("FOIA") and addresses to which requests for records and appeals of denials of copies of records should be addressed. These addresses have changed since the OTS's FOIA regulations were last amended, making a correction necessary.

Section 545.12, OTS's regulation relating to demand deposit accounts, is being amended to correct a cross-reference to OTS's regulations concerning the payment of interest on demand accounts.

Section 545.121(g), relating to the indemnification of directors, officers and employees of Federal savings associations, contains an erroneous reference to 12 U.S.C. 1821(n). The reference should be to 12 U.S.C. 1821(k), a provision relating to directors and officers liability.

OTS's organization regulation for Federal stock associations concerning the appointment of officers found at section 552.6-2 is being revised to correct typographical errors which occurred during the recodification of the Federal Home Loan Bank Board's ("FHLBB") regulations following enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183. 54 FR 49411 (November 30, 1989).

A typographical error in the recently adopted rules governing the conduct of administrative hearings, codified at 12 CFR part 509, is being corrected. 56 FR 38306 (August 12, 1991). In addition, a typographical error found in Item 6 of the instructions to form AR, which follow 12 CFR 563.45 is being corrected.

The OTS is also removing its equity risk investment rule found at 12 CFR 563.98, and a related cross-reference. Though the equity risk investment rule expired on July 13, 1990 as provided in 12 CFR 563.98(h), the rule must be deleted by amendment in order to remove it from the Code of Federal Regulations.

A cross-reference to the equity risk investment regulation found at 12 CFR 563.132, the OTS's regulation concerning securities issued through subsidiaries, is also being deleted. The reference exempts the investment by a savings association in a finance subsidiary from the provisions of the equity risk investment rule. The reference is being removed as unnecessary since the regulation has expired.

The OTS's conflicts regulations found at section 563.43 are being amended to correct an erroneous cross-reference. The change is necessary due to the redesignation of a number of paragraphs in the OTS's final rule concerning transactions with affiliates published on July 25, 1991. 56 FR 34005 (July 25, 1991).

Section 563b.3 is being amended to correct an erroneous reference to "regulatory capital" in the conversion regulation regarding liquidation accounts. The FHLBB, as the predecessor agency to the OTS, adopted a capital regulation in 1986 which globally replaced the term "net worth" with "regulatory capital". 51 FR 33565 (September 22, 1986). Section 563b.3(f)(1) was among the sections revised. The change should not have been made because the provision had required, and has continued to require, that liquidation accounts established at the time of conversion are to be based on net worth. At no time has the requirement been tied to regulatory capital.

Administrative Procedure Act

Since this rule is a technical amendment and contains no substantive changes, the OTS promulgates this rule as a matter of agency organization and management. Therefore, pursuant to 5 U.S.C. 553(a)(2), this rule is exempt from the notice and comment and 30-day delay of effective date requirements of the Administrative Procedure Act.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*

Executive Order 12291

The Director of the Office of Thrift Supervision has determined that, because this final rule is being issued as a matter of agency organization and management, the provisions of Executive Order 12291 do not apply. Consequently, a Regulatory Impact Analysis is not required.

List of Subjects

12 CFR Part 505

Freedom of information.

12 CFR Part 509

Administrative practice and procedure, Penalties.

12 CFR 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 505—FREEDOM OF INFORMATION ACT

1. The authority citation for part 505 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

2. Section 505.2 is revised to read as follows:

§ 505.2 Public reading room.

The Office will make materials available for review on an ad hoc basis when necessary. Contact the Information Services Division, Office of Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or visit the Public Reading Room at 1776 G Street, NW., Street Level, 18th Street side of the building.

3. Section 505.3 is revised to read as follows:

§ 505.3 Requests for records.

Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office will be made by the Chief of Disclosures or by an official so designated. Requests may be mailed to: Freedom of Information Act Request, Information Services Division, Office of Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or delivered in person to: Freedom of Information Act Request, Information Services Division, Office of Public Affairs, Office of Thrift Supervision, 1776 G Street, NW., Street Level, 18th Street side of the building. Requests may also be submitted by facsimile.

4. Section 505.4 is revised to read as follows:

§ 505.4 Administrative appeal of initial determination to deny records.

Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office will be made by the Director of Public Affairs or his or her designee. Appeals by mail should be addressed to: Information Services Division, Office of Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Appeals may be delivered personally to the Information Services Division, Office of Public Affairs, Office of Thrift Supervision, 1776 G Street, NW., Street Level, 18th Street side of building. Appeals may also be submitted by facsimile.

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

5. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 78*l*.

6. Section 509.1 is amended by revising paragraph (c) to read as follows:

§ 509.1 Scope.

* * * * *

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Office should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

* * * * *

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

7. The authority citation for part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464) sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

§ 545.12 [Amended]

8. Section 545.12 is amended by removing the number "§ 561.47" wherever it appears in paragraph (b) and adding in lieu thereof the number "§ 561.16".

§ 545.121 [Amended]

9. Section 545.121 is amended by removing the number "1821(n)" where it appears in paragraph (g) and adding in lieu thereof the number "1821(k)".

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

10. The authority citation for part 552 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

§ 552.6–2 [Amended]

11. Section 552.6–2 is amended by removing the word "offficers" in the last sentence of paragraph (a), and adding in lieu thereof the word "officers"; and by removing the word "comfort" in the last sentence of paragraph (b), and adding in lieu thereof the word "conform".

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

12. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

13. Section 563.43 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 563.43 Restrictions on loans, other investments, and real and personal property transactions involving affiliated persons.

* * * * *

(f) *Conditions.* Transactions permitted under paragraph (e) of this section shall—

* * * * *

14. Section 563.45 is amended by revising Item 6, paragraph (e), Instruction 5, paragraphs (a) and (b) of the General Instructions to Form AR to read as follows:

§ 563.45 Disclosure.

* * * * *

Form AR (Annual Report Form)—General Instructions

* * * * *

Item 6 * * *

(e) * * *

5. * * *

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, (ii) from direct or indirect ownership by such person and all other persons specified in Instructions 1 and 2 above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he or she and all other persons specified in Instructions 1 and 2 above had an interest of less than 10 percent; or

* * * * *

§ 563.98 [Removed]

15. Section 563.98 is removed.

§ 563.132 [Amended]

16. Section 563.132 is amended by removing the last sentence of paragraph (a)(4).

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

17. The authority citation for part 563b continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); secs. 3, 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, l–n, w).

§ 563b.3 [Amended]

18. Section 563b.3 is amended by removing the words "regulatory capital" wherever they appear in paragraph (f)(1), and by adding in lieu thereof the words "net worth".

Dated: October 31, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91–27662 Filed 11–25–91; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–82–AD; Amendment 39–8110; AD 91–25–09]

Airworthiness Directives; EMBRAER (Empresa Brasileira de Aeronautica S.A.) EMB–110 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to EMBRAER EMB–110 series airplanes. This action requires initial and repetitive inspections of the elevator trim tab actuator support for cracks and loose fasteners, and the replacement of any cracked support or loose fastener. There have been five reports of cracked elevator trim tab actuator supports on the affected airplanes. One of these incidents involved total failure of the elevator trim actuator support. The actions specified by this AD are intended to prevent loss of control of the airplane caused by failure of the elevator trim tab actuator support.

DATES: *Effective* December 23, 1991. Comments for inclusion in the Rules Docket must be received on or before January 31, 1992.

ADDRESSES: Information that is related to this AD may be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–82–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Jackson, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: The Centro Tecnico Aeroespacial (CTA), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on EMBRAER EMB–110 series airplanes. The CTA reports five instances (one in Brazil, four in Australia) where the elevator trim tab actuator support cracked. One of these incidents involved total failure of the elevator trim tab actuator support. Total failure of the elevator trim tab actuator support could result in loss of control of the airplane.

The CTA issued CTA Airworthiness Directive (AD) T91–07–02, Amendment 39–683, in order to assure the airworthiness of these airplanes in Brazil. CTA AD T91–07–02 requires repetitive inspections of the elevator trim tab actuator support for cracks and loose fasteners and the replacement of any cracked support or loose fastener. These airplanes are manufactured in Brazil and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the CTA has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the CTA, reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other EMBRAER EMB–110 series airplanes of the same type design that are certificated for operation in the United States, AD action is being taken to prevent loss of control of the airplane caused by failure of the elevator trim tab actuator support. The AD will require repetitive inspections of the elevator trim tab support for cracks or loose fasteners and the replacement of cracked supports or loose fasteners in accordance with the applicable maintenance manual.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be

significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-25-09 EMBRAER (Empresa Brasileira de Aeronautica S.A.): Amendment 39-8110; Docket No. 91-CE-82-AD.

Applicability: EMB-110 Series airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 300 hours TIS.

To prevent loss of control of the airplanes caused by failure of the elevator trim tab support, accomplish the following:

(a) Visually inspect the elevator trim tab actuator support, either part number (P/N) 110-3215-56 or P/N 110-3210-04 for cracks and loose fasteners. Prior to further flight, replace any cracked elevator trim tab actuator support with a new support, P/N 110-3210-04, and replace any loose fasteners in accordance with the applicable maintenance manual.

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

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(d) Information that is related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

This amendment becomes effective on December 23, 1991.

Issued in Kansas City, Missouri, on November 20, 1991.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-28341 Filed 11-25-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-78-AD; Amendment 39-8104; AD 91-25-03]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this rule are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain McDonnell Douglas DC-9 series airplanes, was published in the **Federal Register** on May 7, 1991 (56 FR 21108). That action proposed to require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this rule are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program.

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

One commenter concurred with the proposal.

One commenter requested that the rule be withdrawn and a joint industry/FAA working group be established to review the requirements and develop a more appropriate course of action. The FAA does not concur. In developing this rule, the FAA reviewed available data from industry, manufacturers, aviation safety experts, test results, safety assessments and analyses, and in-service histories. After a thorough evaluation of these data, the FAA developed, in concert with input from the aviation industry, the compliance times and the recommended corrective actions. The FAA has determined that an unsafe condition exists with regard to the brake wear limits currently observed by many Model DC-9 operators, and that AD rulemaking is the appropriate vehicle for ensuring that such unsafe conditions are corrected.

Two commenters stated that the proposal should have been issued as two separate rulemaking actions, one applicable to Model DC-9 series airplanes and one applicable to Model DC-9-80 series airplanes, since the brakes are not interchangeable on these two models. The FAA agrees. After further review of the brake systems on these two models, the FAA has determined that, in certain cases, the proposed allowable wear limits for the Model DC-9 series airplanes are unacceptable for the Model DC-9-80 series airplanes. Therefore, the final rule has been revised to be applicable only to the Model DC-9 series airplanes. Accordingly, the economic analysis paragraph, below, has been revised to reflect this change in applicability. The FAA intends to issue a separate rulemaking action applicable only to Model DC-9-80 series airplanes.

One commenter was concerned that the proposed brake wear limits would result in fewer landings being able to be completed before an airplane's brakes would require replacement. This commenter stated that this would make it impossible to service its Model DC-9 fleet. Furthermore, the commenter stated that if it were to attempt to schedule its Model DC-9 fleet to comply with the requirements of the proposal, the manpower required to service its fleet would adversely affect its brake shop. From these comments, the FAA infers that the commenter requests that the rule be withdrawn. The FAA does not concur. The FAA does agree that the new brake wear limits will require that some operators replace their airplanes' brakes more often than they have in the past, and that this will result in

increased costs. However, as discussed in detail in the preamble to the Notice, the FAA has determined that the brake wear limits currently observed by many Model DC–9 operators cannot withstand the energy required of a rejected takeoff (RTO), and that those limits must be revised in order to provide an adequate level of safety. The FAA considers that the costs associated with the requirements of this rule are reasonable in light of the fact that the new brake wear limits will provide an improved level of safety.

Several commenters requested that the FAA extend the proposed compliance time of 180 days or delay issuance of the rule in order to allow the brake manufacturer ample time to complete the certification of a new brake configuration with improved RTO energy absorbing capability; releasing this rule prior to certification of the new brake configuration will force the manufacturer to dedicate production parts to the existing brake rather than gearing up for the new configuration brake. Although the FAA does not consider delaying this rulemaking action to be warranted, the FAA does concur with the request for an extension of the compliance time. The FAA considers that it would be in the public interest to have the improved brake design installed on the affected airplanes as soon as possible. In order for this to occur in a timely fashion, the brake manufacturer has advised the FAA that it will need additional time to devote its resources to the production and certification of the newly designed brake; in turn, the operators then would need additional time in order to obtain and install the improved brakes. Without extra time, the brake manufacturer would be required to divert a large portion of its resources to producing the existing brake configurations with significantly reduced wear limits. In light of this, the FAA has determined that an extension of the compliance time from the proposed 180 days to 270 days will provide sufficient time for the certification process to be completed, for the brake manufacturer to produce an adequate number of parts, and for most operators to replace the brakes on the airplanes in their fleet. The FAA has determined that such an extension will not adversely affect safety, and has revised the final rule accordingly.

Another commenter requested that the FAA expedite approval of the improved brake configuration which is to replace the brake part number (P/N) 9560861–2. The FAA agrees. The improved configuration for this brake, installed on the Model DC–9–40/50 series airplanes is P/N 9560861–3 and is currently approved at a wear limit of 0.8 inch. Therefore, the final rule has been revised to add this new brake P/N for informational purposes only.

One commenter stated that the part numbers of the brakes, as specified in the proposal, are the vendor's part numbers and not McDonnell Douglas' part numbers. The commenter requested that the rule be revised to clarify this point. The FAA concurs and has revised the final rule to specify that these numbers are Aircraft Braking System part numbers.

Another commenter disagreed with the standard that the FAA imposed regarding the allowance of thrust reverser credit in the calculation of the energy that the brake must absorb in its worn state; this commenter asked that the allowable wear limits be adjusted to reflect no credit for thrust reversers. The commenter's reason for objection was that the FAA would be unable to assure that brakes worn to the maximum allowable limit are capable of absorbing the additional energy if thrust reversers are not used or inoperable. The FAA concurs in part with the commenter. If thrust reversers are unavailable, it is possible that the brakes will not be able to absorb the energy of a maximum kinetic energy RTO on a dry runway, field-length limited takeoff, with all the brakes at their maximum wear state. However, the FAA does not concur that the wear limit should be based on the absence of thrust reversers. A number of factors exist which, when considered, provide an acceptable level of safety without further reducing allowable brake wear through eliminating the effect of thrust reversers. Maximum energy RTO's are a relatively rare event. Further, it is rare for airplanes to be operating with all brakes worn to their limit. In addition, thrust reversers will in almost all cases be used because flight crews are trained to apply them when bringing the airplane to a stop, especially during an RTO. It should also be noted that the energy credit allowed for thrust reversers for the purposes of this final rule is based on loss of an engine and its attendant thrust reverser, and loss of an engine is not the only reason for rejecting a takeoff. Also, there is usually more runway distance available than the minimum allowable under the operating rules, which provides some stopping performance margin during an RTO. When all these factors are considered, sufficient conservatism is present to offset the added costs associated with limiting brake wear based on the absence of thrust reversers.

Four commenters stated that the economic impact was underestimated, since it does not include the cost of spare parts and the accelerated rate for brake replacement due to the reduction in brake wear limits. The FAA disagrees. Historically, recurring cost due to consumables have not been included in economic analyses of AD rulemaking. The cost of replacing brakes is considered to be the same as or similar to the increased cost in a part that is routinely replaced, or increased costs of fuel. The estimates used in the economic impact analysis are those direct costs associated with the initial compliance with the AD.

The format of the final rule has been restructured to be consistent with the standard **Federal Register** style.

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

There are approximately 912 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 588 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The costs of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits of a one-time change) is estimated to be $12,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,349,600.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact,

positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-25-03. McDonnell Douglas: Amendment 39-8104. Docket No. 91-NM-78-AD.

Applicability: Model DC-9 series, including C-9 (military), airplanes equipped with Aircraft Braking System (ABS) brake part numbers identified in paragraph (a), of this AD, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 270 days after the effective date of this AD, inspect the landing gear brakes, having brake numbers listed below, for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within these limits.

Series airplane	ABS brake part No.	Maximum wear limit (inches)
DC-9-10	9560746A	0.3
	B9560746A	0.3
	9560743	0.3
	A9560743	0.3
	B9560743	0.3
DC-9-20/30	9560786	0.3
	A9560786	0.3
	B9560786	0.3
DC-9-30	9560955	0.3
	9560788	0.3
	A9560788	0.3
	B9560788	0.3
	9560788-2/-3/-5/-6	0.3
	9569788-7	0.7
DC-9-30/40/50	B9560861	0.3
	9560861-1	0.2
	9560861-2	0.3
	9560861-3	0.8

(b) Within 270 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance inspection program.

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

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

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

(e) This amendment (39-8104), AD 91-25-03, becomes effective on December 31, 1991.

Issued in Renton, Washington, on November 14, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-28358 Filed 11-25-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN-0720-AA11

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Drug Benefits; Appropriate Level of Care Provisions

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends the DoD Regulation 6010.8-R (32 CFR part 199) by: (1) Establishing the absolute requirement for approval by the Food and Drug Administration (FDA) of all prescription drugs and medicines (drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered under CHAMPUS as if FDA approved); (2) clarifying that medical care related to the use of Group C drugs (approved and distributed by the National Cancer Institute) and Treatment Investigational New Drugs (INDs) will not automatically be considered as experimental when the patient's medical condition warrants the use of these drugs; and (3) reclarifying a CHAMPUS provision that allows benefits in an acute facility above the appropriate level of care. The above changes are reasonable and necessary for effective and uniform administration of CHAMPUS.

EFFECTIVE DATE: November 26, 1991.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Office of Program Development, OCHAMPUS, telephone (303) 361-4337.

SUPPLEMENTARY INFORMATION: DoD 6010.8-R (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)) was published in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 90-13388 appearing in the **Federal Register** on June 11, 1990 (55 FR 23554), the Office of the Secretary of Defense published for public comment a notice of proposed rule making regarding (1) Establishing the absolute requirement for approval by the Food and Drug Administration (FDA) of all prescription drugs and medicines (drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered under CHAMPUS as if FDA approved); (2) clarifying that medical care related to the use of Group C drugs (approved and distributed by the National Cancer Institute) and Treatment INDs will not automatically be considered as experimental when the patient's medical condition warrants the use of these drugs; and (3) removing a provision that allows benefits in a facility above the appropriate level of care. The following summarizes the comments received and the actions taken based on these comments.

Discussion of Comments

We received three (3) public comments from two (2) nationally recognized associations recommending changes or additions to the proposed rule. We also received three (3) comments from those government agencies which by law CHAMPUS is required to consult with during the rule making process. Two (2) of the three (3) comments were identical to those expressed by the public. A summary of the comments and our responses are listed below.

Comment: We question CHAMPUS coverage and payment for the drug Clozaril, a drug indicated for the

management of severely ill schizophrenic patients who fail to respond adequately to standard antipsychotic treatment. We recommend consideration be given to allowing CHAMPUS coverage of Clozaril for patients requiring the drug as treatment.

Response: Drugs that are FDA approved for marketing are a benefit under the CHAMPUS as long as they are prescribed in accordance with generally accepted standards. CHAMPUS coverage criteria for Clozaril are under development and will be released in the near future.

Comment: We oppose the removal of the current exception to the CHAMPUS requirement for an appropriate level of care, specifically its effects on mental health patients requiring residential treatment center (RTC) care which is not always available in the general locality. We are concerned that these CHAMPUS beneficiaries would be denied access to needed psychiatric care.

Response: We wish to assure this commentor that CHAMPUS beneficiaries will not be denied access to needed psychiatric care. The removal of the current exception will in no way affect the quality of care available to CHAMPUS mental health patients. As stated in the proposed rule, the exception has never been applied to mental health care. Acute inpatient psychiatric hospitalization represents not only a different level of care than that provided in other mental health inpatient settings, but often a different kind of care as well. It is often the case that a beneficiary who would benefit from the less structured environment of an RTC would not benefit as much from the more structured acute care environment. When dealing with mental health patients, care furnished above the appropriate level signifies more than merely that it was too much or too expensive; it may also involve care which was not medically appropriate. This exception has only been applied to patients requiring skilled nursing facility care which as outlined in the proposed rule represents less than 0.02 percent of all CHAMPUS claims. This reclarification will have no impact on the adjudication and review of mental health benefits.

Comment: We oppose the elimination of the exception related to appropriate level of care and what we perceive to be an attempt by CHAMPUS to follow Medicare's lead and establish provisions which would incorporate payment for "administratively necessary days" into prospective payment system rates.

Response: We found this commentor's argument persuasive. As stated in response to the previous comment, this exception has been primarily applied to patients requiring subsequent skilled nursing care following an acute treatment episode and represents only a small CHAMPUS population. For CHAMPUS to follow Medicare's lead for such a small population group is not administratively feasible. Rather than removing the exception, we have incorporated language which clarifies that this exception applies solely to medical care related to skilled nursing facility care.

Comment: We question CHAMPUS' rational for including coverage of medical care involving the use of Group C drugs and excluding a similar category, Treatment Investigational New Drugs (INDs).

Response: We found this commentor's argument persuasive. We have incorporated language which clarifies that medical care related to the use of Treatment INDs should be covered in the same manner as medical care related to Group C drugs.

Summary of the Final Rule Provisions

I. Drug Listing in the U.S. Pharmacopeia or the National Formulary

Section 199.4(d)(3)(vi) provides for the prescription drug and insulin benefit under the Basic Program and § 199.5(h)(2)(iii) provides for this benefit under the Program for the Handicapped. Section 199.4(d)(3)(vi)(B) states that "CHAMPUS benefits may not be extended for drugs not approved by the U.S. Food and Drug Administration for general use by humans (even though approved for testing with humans)." Also, § 199.5(h)(2)(iii) limits coverage of drugs "to those approved for general use by humans (other than testing) by the U.S. Food and Drug Administration." But in § 199.2 under the definition of "*Experimental,*" there was a provision which read, "However, if a drug or medicine is listed in the "U.S. Pharmacopeia" or the "National Formulary" and requires a prescription, it is not considered experimental even if it is under investigation by the U.S. Food and Drug Administration (FDA) as to its effectiveness." In a recent appeal case, we discovered that this provision could unreasonably result in CHAMPUS payment for a drug that has not been approved for general use by the FDA. The "U.S. Pharmacopeia" and the "National Formulary" are merely the official compendia of standards for drugs which include assays and tests for the determination of their strength, quality, and purity. These compendia do not deal with clinical indications, pharmacology, safety, or effectiveness of drugs. Since the FDA approval requirement is intended to assure safety and effectiveness of drugs, we believe it is appropriate to delete the above provision related to drug listing in the "U.S. Pharmacopeia" and the "National Formulary" which could unreasonably result in CHAMPUS benefits for unapproved drugs. Accordingly, this final rule revises the definition of "*Experimental*" in § 199.2 by deleting the above provision. It also revises the language in this definition to clarify that the FDA's approval for general use means the approval for their commercial marketing and that drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938, may be covered under CHAMPUS as if FDA approved. In addition, "Prescription Drugs and Medicines" in § 199.2 and § 199.4(d)(3)(vi) has been revised to coincide with the above information.

II. Group C Drugs and Treatment INDs

Under its Cancer Therapy Evaluation, the Division of Cancer Treatment of the National Cancer Institute (NCI), in cooperation with the FDA, permits and distributes certain drugs for use in treating terminally ill cancer patients. One group of these drugs, designated as Group C drugs, unlike other drugs distributed by the NCI, are not limited to use in clinical trials for the purpose of testing their efficacy. The Group C drugs are distributed to the NCI registered physicians at no cost. Drugs are classified as Group C drugs only if there is sufficient evidence demonstrating their activity against a tumor type and that they can be safely administered.

On May 22, 1987, the FDA issued final procedures under which promising investigational new drugs, known as Treatment INDs, may be made available to desperately ill patients before general marketing begins. The procedures were intended to facilitate the availability of promising new drugs to patients as early in the drug development process as possible, and to obtain additional data on the drug's safety and effectiveness. The procedures apply to patients with serious and immediately life-threatening diseases for which no comparable or satisfactory alternative drug or other therapies exist. The FDA also defined the conditions under which drug manufacturers may charge for investigational new drug products. Medical care related to the use of Group C drugs and Treatment INDs should not automatically be considered as experimental even though these drugs are not covered under CHAMPUS as these are not approved for commercial marketing by the FDA. Medical care

related to the use of Group C drugs and Treatment INDs can be cost-shared under CHAMPUS when the patient's medical condition warrants their administration and the care is provided in accordance with generally accepted standards of medical practice. The definition of "*Experimental*" in § 199.2 precluded CHAMPUS benefits for such medical care as the Group C drugs and Treatment INDs are not FDA approved for general use or commercial marketing. This final rule revises the above definition clarifying that such medical care cannot automatically be considered as experimental, when the patient's condition warrants the use of these drugs.

III. Appropriate Level of Care

The CHAMPUS law and regulation limit CHAMPUS cost-sharing to care which is determined to be medically necessary and furnished at the appropriate level. However, the CHAMPUS regulation contains the following provision (§ 199.4(b)(1)(iv)) which can allow benefits in a higher than the appropriate level care facility under certain circumstances. The provision now reads:

Inpatient, appropriate level required. For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment. If an appropriate lower level care facility is adequate, but is not available in the general locality, benefits may be continued in the higher level care facility, but CHAMPUS institutional benefit payments shall be limited to the allowable cost that would have been incurred in the appropriate lower level care facility, as determined by the Director, OCHAMPUS, or a designee. If it is determined that the institutional care can be provided reasonably in the home setting, no CHAMPUS institutional benefits are payable.

Based on comments received following publication of the proposed rule regarding the appropriate level of care provision, CHAMPUS has decided to retain the provision (§ 199.4(b)(1)(iv)) and add clarifying language which will specifically state that benefits in a higher than the appropriate level care facility may be permitted only for patients requiring skilled nursing facility care not available in the general locality.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions. The final rule will broaden the scope of CHAMPUS benefits by extending benefits to include coverage for medical care related to the administration of Group C drugs and Treatment INDs, establishes the absolute requirement for FDA approval of all prescription drugs and medicines, and reclarifies the intent of the language on appropriate level of care. It will not involve any significant burden on the CHAMPUS beneficiary or provider population. It is not, therefore, a "major rule" under Executive Order 12291.

This final rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military Personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C 1079, 1086, and 5 U.S.C. 301.

2. § 199.2(b) is amended by revising the definitions of *Experimental* and *Prescription drugs and medicines* to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

* * * * *

Experimental. Medical care that essentially is investigatory or an unproven procedure or treatment regimen (usually performed under controlled medicolegal conditions) that does not meet the generally accepted standards of usual professional medical practice in the general medical community. The conduct of biomedical or behavioral research involving human subjects at risk of physical, psychological, or social injury is experimental medicine. For the purposes of CHAMPUS, any medical services or supplies provided under a scientific research grant, either public or private, are classified as "experimental." (Financial grants-in-aid to an individual beneficiary are not considered grants for this purpose.) Use of drugs and medicines and devices not approved by the U.S. Food and Drug Administration (FDA) for commercial marketing, that is, for general use by humans (even though permitted for testing on human beings) also is considered experimental. Drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered under CHAMPUS as if FDA approved. Certain cancer drugs, designated as Group C drugs (approved and distributed by the National Cancer Institute) and Treatment Investigational New Drugs (INDs), cannot be cost-shared under CHAMPUS because they are not approved for commercial marketing by the FDA. However, medical care related to the use of Group C drugs and Treatment INDs can be cost-shared under CHAMPUS when the patient's medical condition warrants their administration and the care is provided in accordance with generally accepted standards of medical practice.

Note: In areas outside the United States, standards comparable to those of the FDA are the CHAMPUS objective.

* * * * *

Prescription drugs and medicines. Drugs and medicines which at the time of use were approved for commercial marketing by the U.S. Food and Drug Administration, and which, by law of the United States, require a physician's or dentist's prescription, except that it includes insulin for known diabetics whether or not a prescription is required. Drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered under CHAMPUS as if FDA approved.

Note: The fact that the U.S. Food and Drug Administration has approved a drug for testing on humans would not qualify it within this definition.

* * * * *

4. § 199.4 is amended by revising paragraphs (b)(1)(iv), (d)(3)(vi) introductory text and (d)(3)(vi)(B) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) * * *

(1) * * *

(iv) *Inpatient, appropriate level required.* For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment except for patients requiring

skilled nursing facility care. For patients for whom skilled nursing facility care is adequate, but is not available in the general locality, benefits may be continued in the higher level care facility. General locality means an area that includes all the skilled nursing facilities within 50 miles of the higher level facility, unless the higher level facility can demonstrate that the skilled nursing facilities are inaccessible to its patients. The decision as to whether a skilled nursing facility is within the higher level facility's general locality, or the skilled nursing facility is inaccessible to the higher level facility's patients shall be a CHAMPUS contractor initial determination for the purposes of appeal under § 199.10 of this part. CHAMPUS institutional benefit payments shall be limited to the allowable cost that would have been incurred in the skilled nursing facility, as determined by the Director, OCHAMPUS, or a designee. If it is determined that the institutional care can be provided reasonably in the home setting, no CHAMPUS institutional benefits are payable.

* * * * *

(d) * * *

(3) * * *

(vi) *Prescription drugs and medicines.* Prescription drugs and medicines that by United States law require a physician's or other authorized individual professional provider's prescription (acting within the scope of their license) and that are ordered or prescribed by a physician or other authorized individual professional provider (except that insulin is covered for a known diabetic, even though a prescription may not be required for its purchase) in connection with an otherwise covered condition or treatment, including Rh immune globulin.

* * * * *

(B) CHAMPUS benefits may not be extended for drugs not approved by the U.S. Food and Drug Administration for commercial marketing. Drugs grandfathered by the Federal Food, Drug and Cosmetic Act of 1938 may be covered under CHAMPUS as if FDA approved.

* * * * *

Dated: November 19, 1991.

L.M. Bynum,

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

[FR Doc. 91-28180 Filed 11-25-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 199

[DoD 6010.8-R]

RIN-0720-AA12

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Medical Documentation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends DoD 6010.8-R (32 CFR part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The final rule clarifies and strengthens medical documentation requirements under the CHAMPUS. This will assist in the maintenance of an adequate level of quality care and help ensure that payment is made only for services rendered.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303) 361-3537.

SUPPLEMENTARY INFORMATION: DoD 6010.8-R (32 CFR part 199) was revised in the **Federal Register** on July 1, 1986 (51 FR 24008). In FR Doc. 90-26939, appearing in the **Federal Register** on November 26, 1990 (55 FR 49091), the Office of the Secretary of Defense published for public comment a proposed amendment strengthening medical documentation requirements under CHAMPUS.

Background

The need for thorough medical documentation for verification of services has been dramatically demonstrated through the utilization review of services provided to CHAMPUS beneficiaries, particularly within various mental health settings. The lack of pertinent information has often made it impossible to determine the patient's clinical condition, actual treatment rendered, the quality and effectiveness of the care provided, or the identity and qualifications of the staff providing treatment services.

As a result, appropriate medical documentation has become increasingly important to CHAMPUS in the verification of medical and mental health services, since there are few objective indicators to validate professional opinions about diagnoses, response to treatment, and severity of illness. This has placed more emphasis on the need for complete and timely treatment plans, progress notes, and treatment summaries.

Due to the importance of documentation in assuring quality of care and verification of services, minimum requirements are being required, along with specific time frames for their incorporation into the medical records. For mental health care, these medical record documentation requirements have been in effect under the CHAMPUS Contracted Provider Arrangement (CPA) Norfolk Mental Health Services demonstration project since April 1, 1989, and were published in a **Federal Register** notice (54 FR 13935) on April 6, 1989.

The effectiveness of the requirements has been established since that date with minimal administrative burden to providers. These documentation requirements are similar to those currently being used by the CHAMPUS mental health review contractor responsible for managing mental health utilization for CHAMPUS beneficiaries nationwide.

Based on existing Regulations, the medical records for psychiatric residential treatment centers (RTCs) for children and adolescents, acute care psychiatric hospitals, psychiatric units within acute care institutions, alcohol rehabilitation facilities, partial hospitalization programs, and outpatient psychotherapy must, at a minimum, be maintained in accordance with applicable JCAHO standards. The new requirements will complement the JCAHO standards, ensuring that specific care was actually and appropriately furnished, was medcally or psychologically necessary, and will identify the individuals providing the care.

The final rule will clarify and strengthen CHAMPUS requirements for accurate, legible and timely medical documentation of services provided to its beneficiaries. This will require that contemporaneous medical records are maintained in accordance with generally accepted medical practice and that services are actually being rendered. Maintenance of appropriate medical documentation is an essential ingredient in the overall care of the patient assuring medical necessity and appropriateness of care. It serves as a basis for planning a patient's care and for the ongoing evaluation of the patient's condition and treatment. A provider's failure to comply with these new documentation requirements can result in sanctions being imposed by the Director, OCHAMPUS, or a designee, under § 199.9 of this part.

Review of Comments

As a result of the publication of the proposed rule, the following comments were received from interested facilities, associations, agencies and individuals.

1. Several commentors saw no added benefit, either in terms of assuring quality of patient care or appropriateness of services rendered, to be obtained from additional medical record documentation except as a means of evaluating compliance with paperwork requirements.

The medical record provides a longitudinal case history of significant events available to serve as a basis for future treatment decisions and planning. It serves as the medium through which staff members can convey current information regarding the success or failure of therapeutic interventions.

In order to make a judgment as to the quality of care, third-party payors must depend on audits of medical charts. An assumption must be made that the chart accurately documents the decisions and actions of the provider managing the patient's care and reflects the quantity and quality of care actually delivered. While we realize that good records do not always equate to good treatment, they do tend to complement each other.

Due to the increasing cost of health care, and the concern for quality of care available to the public, clinicians can no longer use nondescriptive phenomenon, such as the "therapeutic relationship" to justify the lack of medical documentation. The documentation must be explicit and focused on the diagnostic and treatment process. Since the measuring of quality services is a difficult task, the need for such measurement and subsequent accountability is being demanded by consumers as well as third-party payers.

2. One commentor felt that the additional documentation requirements for provision of mental health services are intrusive, clinically inappropriate, and in effect, discriminatory.

The American Psychiatric Association's position, which is shared by the American Medical Association and the American Hospital Association, is that there should be no discrimination between medical and mental health benefits. This conceptualization should carry through to medical record requirements.

In the case of acute inpatient medical/surgical care, progress notes are usually written on at least a daily basis, with the attending physician documenting all identifiable physician services. The clinical records are continually updated at the end of each of the nursing shifts, recording the patient's status, behavior and response to treatment. Contemporaneous medical documentation has been elevated to its current importance as a result of diagnostic related group (DRG) reimbursement, where the quality of medical documentation is directly related to maximum reimbursement.

The need for continual/periodic recording of the patient's status is even more critical with mental health care where there are few objective indicators that validate medical opinions about diagnosis, response to treatment, and severity of illness. Without adequate medical record documentation, there is little on which to determine medical or psychological necessity or appropriateness of care. This is especially relevant with the multiplicity and overlapping of treatment inherent in mental health care, where communication is a vital link in assuring continual ongoing feedback and monitoring of a patient's condition. Documentation is particularly important when problems are encountered in treatment, or when changes in patient status require any modifications in the treatment plan.

3. One commentor contended that no one has concluded that treatment plans and progress notes are useful in evaluating quality. However, it was agreed that these documents may contain the data necessary to monitor some elements of quality.

As was referenced previously, escalating health care costs and quality concerns have increased pressures for accountability in publicly funded programs. Both private and Federal health care programs have implemented and tested numerous measures in order to ensure that payment is being made for therapy and/or procedures that actually were provided and that they are appropriate, reasonable, necessary and of high quality. Within CHAMPUS these have included the Contracted Provider Arrangement (CPA) Norfolk Mental Health Services demonstration project which has been using medical records over the last four years to evaluate utilization and quality of care; the CHAMPUS Peer Review Organization (PRO) program for utilization and quality reviews for services provided in hospitals covered by diagnosis related group (DRG)-based payment systems; the CAMP–MH program, a national mental health review contract for managing mental health utilization for CHAMPUS and CHAMPVA beneficiaries nationwide. All of these quality review programs rely on medical records for their review and evaluation and have been very successful in increasing quality and ensuring appropriate utilization of services. Additionally, these programs are consistent with similar initiatives implemented nationwide by most third-party payors, public and private, and clearly demonstrate the need for improvement and consistency in the documentation of medical records.

4. One commentor proposed a 10–14 day time frame for completion of a master treatment plan in an RTC setting. It was felt that this would be more appropriate because of multiple therapies and core issues involved in residential treatment.

The commentor's suggestion has been adopted. The 7-day time frame for completion of the RTC master treatment plan has been changed to 10 days.

5. Several commentors felt that many of the specific time frames and documentation requirements were excessively burdensome and out of step with present standards of practice.

The lack of adequate clinical information has often made it difficult for reviewers to determine the patient's clinical condition, actual treatment rendered, the quality and effectiveness of the care provided, or the identity and qualifications of the staff providing treatment services. Contemporaneous medical documentation is the only way that our reviewers can evaluate the quality and effectiveness of the care provided. It is also the only basis for confirming what care was actually rendered and ultimately the appropriate reimbursement due, and serves as a safeguard against potential fraud or abuse of the program.

These medical documentation requirements have been in effect under the Contracted Provider Arrangement (CPA) Norfolk Mental Health Services demonstration project since April 1, 1989. The effectiveness of the requirements has been established since that date with minimal administrative burden to providers. The documentation requirements are also similar to those currently being used by the CHAMPUS mental health review contractor responsible for managing mental health utilization for CHAMPUS beneficiaries nationwide. The proposed requirements are not new to the CHAMPUS program, and can be maintained with minimal time and effort. The rule simply provides an administrative mechanism for the monitoring and enforcement of already established medical documentation requirements.

6. One commentor felt that the details required within the progress notes and time frames proposed for the master treatment plans, nursing notes, physician notes, and daily therapeutic

milieu notes were not consistent with patterns of practice within an RTC setting.

We disagree with this comment and feel the requirements are fully consistent with the level and intensity of care provided in the RTC setting. This is demonstrated by the fact that contracted residential treatment centers within the CPA demonstration area are currently exceeding the compliance standards (95%) for medical documentation. The requirements are reasonable and within the administrative capability of an RTC facility. The time frames and documentation requirements are also similar to those currently required by the CHAMPUS mental health contractor for RTC admissions and concurrent reviews.

7. Another commentor pointed out that only the assessments used to formulate the preliminary plan of treatment are commonly available within 72 hours. A traditional comprehensive, interdisciplinary individualized treatment plan is usually not available sooner than 10 days after admission.

Since the treatment plan reflects an integrated approach to the overall care of the patient, setting forth specific problems, goals and objectives, treatment modalities and staff responsibilities, it is important that it be completed as soon as possible after admission. This is especially critical in an acute care setting where many admissions do not last as long as 10 days. The agency feels that the 72-hour requirement is reasonable and within the administrative capability of the acute care provider, since it has been in effect in the CHAMPUS demonstration project area since April, 1989, with no noticeable impact on the quality of mental health care.

8. One commentor wanted "preliminary treatment plan" defined.

The preliminary treatment plan should, at a minimum, include: (1) A statement of the diagnosis; (2) who the attending physician is going to be; (3) a statement of symptoms/exhibited problems; (4) what therapies and other treatment are to be instituted; and (5) who the therapists are going to be.

9. One commentor pointed out that Accreditation Manual for Hospitals (AMH) standards have, at a minimum, a dyad approach to planning of treatment; i.e., the physician and nurse (RN) complete a plan of treatment within 24 hours.

It is felt that the dyad approach meets the intent of the standard; i.e., the completion of a preliminary treatment plan within 24 hours of admission.

10. Another commentor felt that pre-"established" treatment goals are not always possible.

Modifications may be made to the treatment plan regarding goals and objectives as the patient brings new problems to the therapy sessions; however, there must be an initial framework from which to work. Preliminary goals and objectives must be developed during the initial assessment process in order to develop an individualized treatment plan, with the realization that modifications may be required during the course of the patient's treatment.

11. One commentor felt that the time frames for several of the requirements were more in keeping with an acute care model than that of a residential treatment center.

There is a differentiation of time frames between acute care and residential treatment facilities based on the type and level of treatment provided in each setting. The time frame for completion of an RTC master treatment plan has been changed from 7 to 14 days, which is more consistent with the patterns of practice within an RTC setting.

12. Several commentors felt that documentation requirements for progress notes were excessive/burdensome, and would needlessly duplicate and clutter the medical record.

Since the maintenance of accurate individual treatment records is an essential ingredient to the treatment delivery process, it is important that progress notes provide a chronological picture of the patient's clinical course; documentation of treatment rendered to the patient; the response and outcome of that treatment; and the person(s) rendering the treatment. While a progress note does not need to repeat all that was said during a therapy session, it must document a patient contact and be sufficiently detailed to allow both peer review and audits to substantiate the content and quantity of care intended. This type of recording is included in the reimbursement of both inpatient and outpatient psychotherapy which allows payment for 60 minute psychotherapy sessions consisting of 50 minutes of actual therapy and 10 minutes of recording the session in the patient's chart.

13. Another commentor felt that progress notes should capture the overall course and progress of treatment but should not have to prescriptively describe each event.

As was stated previously, progress notes do not have to divulge everything that occurred or that was observed during the treatment session, only those observations felt to be of significance in the ongoing treatment of the patient. A superfluous statement such as, "the patient slept well," would only be significant if it had clinical relevance to the patient's diagnosis/condition, response to therapeutic intervention, and/or the degree of progress toward the treatment goals. Also, the use of extraneous statements, such as "condition fair," "general condition good," and "no complaints," are of no value. The quality of the progress note depends in part on the timeliness, meaningfulness, authentication, and legibility of the information content.

14. Another commentor felt that our requirement that each clinical event be documented as soon as possible after its occurrence would demand interpretation of single-event therapies. It was pointed out that these interpretations could be counter productive and even lead to faulty conclusions since many psychiatric therapies rely on a series of interventions to measure effects on the patients and to reach clinical conclusions.

On the contrary, contemporaneous medical documentation would tend to provide a cohesive integration of a series of therapeutic interventions. This would be especially relevant when a patient is receiving a variety of therapies daily, since communication is a vital link in the team approach assuring continual ongoing feedback and monitoring of a patient's condition. Timely documentation would prevent duplicative efforts and maximize treatment by allowing modification to treatment goals/objectives dictated, at least in part, by the patient's needs, severity of illness, and therapeutic responses.

As was noted previously, contemporaneous medical documentation (progress notes) is an integral part of acute inpatient medical care. In a medical care facility, progress notes are usually written on at least a daily basis, with the attending physician documenting all services. However, this is often not the case with mental health care where providers may see patients 4 to 5 times a week and make weekly or biweekly summary notes in the patients' clinical records. It is difficult to believe a professional in daily contact with 6 to 12 patients could accurately recall all contacts, care and significant events with a progress note prepared once a week.

15. Several commentors felt that the proposed regulation forced all CHAMPUS providers to adhere to standards which are not in accordance

with known JCAHO and Medicare standards for mental health providers.

From a third-party payor perspective, there is a distinction between accreditation standards (JCAHO standards) and specific requirements for claims adjudication. The Consolidated Standards (CS) and Accreditation Manual for Hospitals (AMH) standards relate to the accreditation and oversight of entire programs, while claims adjudication requirements focus exclusively on the patient as an individual. Individual medical records are used to demonstrate whether the care was needed and if it was of such quality to meet the patient's needs. Accreditation standards simply establish minimal requirements for certification by third-party payors/programs. As was stated previously, one is facility directed while the other is based on the individual.

Medicare standards were felt to be inappropriate since the scope and focus of Medicare's mental health benefit was significantly different than that of CHAMPUS'; i.e., (1) Medicare has a 120-day lifetime limit on inpatient mental health care while CHAMPUS has none; (2) Medicare does not have the range of patients and diagnoses that CHAMPUS has; and (3) while mental health services only account for two percent of the Medicare budget, they account for over 30 percent of CHAMPUS' budget.

The mental health providers within the CPA demonstration area have adapted to the same documentation standards with minimal administrative disruption. These standards have been tested/evaluated over the last four years and are a part of the current mental health utilization review process.

16. One commentor felt that JCAHO consolidated standards place undue hardship on psychiatric hospitals, as they are now surveyed under the JCAHO AMH standards.

The CPA demonstration project has shown that acute psychiatric hospitals can meet and surpass the JCAHO consolidated standards for medical record documentation with minimal hardship. In this area, the consolidated standards provide the necessary detail for ongoing, periodic recording of information about the patient's status, behavior and response to treatment.

17. One commentor felt that the requirement for nursing notes would cause an undue hardship on RTC facilities if "nursing" was strictly interpreted as professional, psychiatrically trained nurses.

We are aware of the fact that the staffing mix within an RTC may vary from that of a psychiatric hospital; i.e., acute hospitals tend to have a greater mix of professionals and greater involvement by psychiatric nurses and psychiatrists. RTCs, on the other hand, usually have more Masters of Social Work (MSWs) and clinical psychologists. RTC nurses must be, at a minimum, registered nurses (RNs). There is no requirement that the nursing staff be professional, psychiatrically trained nurses.

18. Another commentor felt that nursing notes should be further defined as requiring shift notes by registered nurses for acute care and detox; partial hospitalization should require registered nursing notes every ten visits; and registered nursing notes should be entered into the medical record at least weekly for RTCs.

This suggestion has been adopted and incorporated into the final rule.

19. Several commentors felt the time frames for family assessment documentation would be ineffective in evaluation and treatment.

Since the family is the number one discharge alternative for children and adolescents, it is extremely critical that a family assessment be conducted as soon as possible after admission. This is especially relevant in an acute care setting, where many of the admissions may be less than 10 days. In these particular cases, the dysfunctional family would be the focus of the treatment.

20. Another commentor felt that the requirement for individual and family therapy documentation within 24 hours was unreasonable and not compatible with current treatment practice.

There is apparently a misunderstanding regarding the intent of this requirement. It does not imply that the individual or family therapy has to happen within 24 hours of admission. It simply requires that documentation for individual and family therapy must be recorded in the medical records within 24 hours after its occurrence for patients in acute care, detoxification and residential programs, and within 48 hours for partial programs.

21. One commentor felt that the requirements to "reveal the issues and pathology addressed in the therapy session, the therapeutic intervention attempted during the session, and the degree of progress toward established treatment goals" would lead to a breach of confidentiality in many situations.

It is not felt that being specific about the problems addressed in a psychotherapy session necessarily implies that confidentiality is being breached any more than a vague, rambling progress note might do. As was referenced previously, the progress note does not have to reveal every intimate detail of the therapy session, only that information pertinent to the broader goals and objectives outlined in the patient's treatment plan. However, this documentation must be distinguished from anecdotal charting. Generalized statements, such as "condition fair", "general condition good" and "no complaints", are not sufficient to review and evaluate the patient's ongoing course of treatment.

22. Another commentor felt that unless CHAMPUS intends to establish an on-site review process to replace the present mental health review system, then the constant threat in the regulation of payment denial is meaningless except retroactively.

The documentation requirements are not designed to be used as prepayment review criteria, since the FIs do not have access to medical records. Mental health records would only be accessed by the mental health review contractor as a result of concurrent review. A pattern of failure to adequately document medical care could result in retrospective denial of CHAMPUS cost-sharing for an entire episode of care, both institutional and professional claims. A pattern of failure to meet minimum documentation requirements could also result in provider sanctions as prescribed under Section 199.9 of the Regulation.

23. One commentor felt that the proposed changes would have a significant impact on CHAMPUS-approved RTCs and also increase information collection requirements on all CHAMPUS providers substantially. It was recommended that the proposed regulation adhere to the regulatory procedures governed by the "major theory and paperwork reduction act."

Since the recording of acute inpatient medical/surgical documentation generally exceeds the informational requirements and time frames set forth in this rule, we would expect these changes to have a minimal impact on this category of provider; i.e, care associated with acute inpatient hospitalization, both institutional and professional.

With regard to mental health providers, it has been demonstrated through the CPA project that these medical documentation requirements can be initiated with minimal administrative disruption. The proposed time frames and documentation requirements are also similar to those used by the CHAMPUS mental health review contract as part of the utilization review.

RTCs represent less than 0.13 percent (.0013) of CHAMPUS institutional providers and less than 0.04 percent

(.0004) of CHAMPUS professional providers.

24. One commentor requested clarification of which providers qualify as "CHAMPUS authorized mental health professional."

The following are CHAMPUS-authorized mental health professionals: (1) Physicians (psychiatrists); (2) clinical psychologists; (3) certified clinical social workers; (4) certified psychiatric nurse specialists; (5) marriage and family counselors; (6) pastoral counselors; and (7) mental health counselors.

25. Another commentor felt that the reference to partial programs was premature, since CHAMPUS benefits currently exist only for chemical dependency partial programs.

It is the intent of the program to establish a partial program benefit in the near future.

26. One commentor felt that stringent requirements would, in effect, keep providers from accepting CHAMPUS patients.

This occurrence is not anticipated since the new documentation requirements have been in effect in the CPA demonstration area since April of 1989, with minimal reduction in the availability of qualified mental health providers.

27. Another commentor was concerned about the borrowing of medical record documentation requirements from the CPA Norfork Mental Health Services demonstration project since it did not include a broad number of mental health providers.

The CPA Norfork Mental Health Services demonstration project was initiated to evaluate alternative mental health delivery systems. It has been the testing ground for managed mental health care since 1986, which includes a continuum of mental health services from acute inpatient hospitalization to partial hospitalization. In fact, the proposed implementation of a partial hospitalization benefit (published as a proposed rule in the **Federal Register** on July 8, 1991, (56 FR 30887)) resulted from this study. The demonstration project provided a sufficient number of admissions and providers to accurately assess various aspects of the managed mental health care system, especially the impact of documentation requirements.

28. Another commentor feared that a system may be put into place where pre-certification will be meaningless because all care will be subject to retroactive review of the medical record.

On the contrary, these medical documentation requirements will only serve to verify that information provided to the mental health review contractor during the certification process is supported in the medical records. During the precertification process, the utilization management coordinator reviews the planned care and determines whether the care is medically/ psychologically necessary and at the appropriate level. This is followed by post-payment validation in which a copy of the complete medical record is requested. The validation examines medical necessity and appropriateness, quality of care, and adequacy of documentation. The new standards will only assure that the medical records are sufficiently detailed to accurately assess these factors; i.e., medical necessity, appropriateness of care, etc.

29. Another commentor stated that our requirement to complete the master treatment plan within 72 hours of admission was not always possible, particularly for patients admitted on an emergency basis on weekends or holidays.

It is recognized that there may be extraordinary situations which make it impossible to meet one of the specific standards/criteria; i.e., emergency admissions on weekends or holidays. The contractor will take this into consideration on an individual basis. Mainly, the contractor will be looking for patterns of inadequate documentation rather than isolated incidences.

30. Several commentors felt that the requirement for daily "milieu" notes was ambiguous and inappropriate. It was pointed out that some programs did not use milieu as an integral part of the treatment focus, but rather as part of an environment that is being fostered.

The requirement was removed because of its apparent ambiguity.

Summary of Regulatory Modifications

The following modifications were made as a result of suggestions received during the public comment period:

(1) The 7-day time frame for completion of the RTC master treatment plan was changed to 10 days; (2) the time frames for nursing notes were further expanded; and (3) the requirements for daily therapeutic milieu notes were removed.

Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a major rule under Order 12291. The changes set forth in this final rule are minor revisions to existing regulation. In addition, this final rule will have very minor impact and not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This final rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511.)

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR, part 199, is amended as follows:

1. The authority citation for part 199 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1079, 1086.

2. Section 199.2(b) is amended by adding the definition for "Progress Notes" in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) Specific definitions.

* * * * *

Progress notes. Progress notes are an essential component of the medical record wherein health care personnel provide written evidence of ordered and supervised diagnostic tests, treatments, medical procedures, therapeutic behavior and outcomes. In the case of mental health care, progress notes must include: the date of the therapy session; length of the therapy session; a notation of the patient's signs and symptoms; the issues, pathology and specific behaviors addressed in the therapy session; a statement summarizing the therapeutic interventions attempted during the therapy session; descriptions of the response to treatment, the outcome of the treatment, and the response to significant others; and a statement summarizing the patient's degree of progress toward the treatment goals. Progress notes do not need to repeat all that was said during a therapy session but must document a patient contact and be sufficiently detailed to allow for

both peer review and audits to substantiate the quality and quantity of care rendered.

* * * * *

3. Section 199.6 is amended by adding new paragraph (b)(1)(iii), by revising paragraph (b)(4)(iv)(B), by adding new paragraphs (b)(4)(iv)(D), (b)(4)(vii)(E), (b)(4)(x)(B)(*3*)(*viii*), and (c)(1)(v) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(1) * * *

(iii) *Medical records.* Institutional providers must provide adequate contemporaneous clinical records to substantiate that specific care was actually furnished, was medically necessary, and appropriate, and to identify the individual(s) who provided the care. The minimum requirements for medical record documentation are set forth by the following:

(A) The cognizant state licensing authority;

(B) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or other health care accreditation organizations as may be appropriate;

(C) Standards of practice established by national medical organizations; and

(D) This part.

* * * * *

(4) * * *

(iv) * * *

(B) In order for the services of a psychiatric hospital to be covered, the hospital shall comply with the provisions outlined in paragraph (b)(4)(i) of this section. All psychiatric hospitals shall be accredited under the JCAHO Accreditation Manual for Hospitals (AMH) standards in order for their services to be cost-shared under CHAMPUS. In the case of those psychiatric hospitals that are not JCAHO-accredited because they have not been in operation a sufficient period of time to be eligible to request an accreditation survey by the JCAHO, the Director, OCHAMPUS, or a designee, may grant temporary approval if the hospital is certified and participating under Title XVIII of the Social Security Act (Medicare, Part A). This temporary approval expires 12 months from the date on which the psychiatric hospital first becomes eligible to request an accreditation survey by the JCAHO.

* * * * *

(D) Although psychiatric hospitals are accredited under the JCAHO AMH standards, their medical records must be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The hospital is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(vii) * * *

(E) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The residential treatment center is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(x) * * *

(B) * * *

(3) * * *

(*viii*) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The alcohol rehabilitation facility is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(c) * * *

(1) * * *

(v) *Medical records:* Individual professional providers must maintain adequate clinical records to substantiate that specific care was actually furnished, was medically necessary, and appropriate, and identify(ies) the individual(s) who provided the care. This applies whether the care is inpatient or outpatient. The minimum requirements for medical record documentation are set forth by the following:

(A) The cognizant state licensing authority;

(B) The Joint Commission on Accreditation of Healthcare Organizations, or other health care accreditation organizations as may be appropriate;

(C) Standards of practice established by national medical organizations; and

(D) This part.

* * * * *

4. Section 199.7 is amended by revising paragraph (a) introductory text, by revising paragraphs (b)(2)(ix) introductory text and (b)(2)(ix)(A), by adding new paragraph (b)(2)(x)(D), by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), by adding new paragraph (b)(3), by revising newly redesignated paragraphs (b)(5)(i) introductory text and (b)(5)(ii), by adding new paragraph (b)(5)(iii), by adding a note immediately following paragraph (c)(1)(iii), by revising paragraph (c)(2)(i)(A), and by adding new paragraph (i)(3) to read as follows:

§ 199.7 Claims submissions, review, and payment.

* * * * *

(a) *General.* The Director, OCHAMPUS, or a designee, is responsible for ensuring that benefits under CHAMPUS are paid only to the extent described in this Part. Before benefits can be paid, an appropriate claim must be submitted that includes sufficient information as to beneficiary identification, the medical services and supplies provided, and double coverage information, to permit proper, accurate, and timely adjudication of the claim by the CHAMPUS contractor or OCHAMPUS. Providers must be able to document that the care or service shown on the claim was rendered. This section sets forth minimum medical record requirements for verification of services. Subject to such definitions, conditions, limitations, exclusions, and requirements as may be set forth in this Part, the following are the CHAMPUS claim filing requirements:

* * * * *

(b) * * *

(2) * * *

(ix) *Physicians or other authorized individual professional providers.* The claims must give the name of the individual actually rendering the care, along with the individual's professional status (e.g., M.D., Ph.D., R.N., etc.) and provider number, if the individual signing the claim is not the provider who actually rendered the service. The following information must also be included:

(A) Date each service was rendered.

* * * * *

(x) * * *

(D) Claims submitted by hospitals (or other authorized institutional providers) must include the name of the individual actually rendering the care, along with the individual's professional status (e.g., M.D., Ph.D., R.N., etc.).

* * * * *

(3) *Medical records/medical documentation.* Medical records are of vital importance in the care and treatment of the patient. Medical records serve as a basis for planning of patient care and for the ongoing evaluation of the patient's treatment and progress. Accurate and timely completion of orders, notes, etc., enable different members of a health care team and subsequent health care providers to have access to relevant data concerning the patient. Appropriate medical records must be maintained in order to accommodate utilization review and to substantiate that billed services were actually rendered.

(i) All care rendered and billed must be appropriately documented in writing. Failure to document the care billed will result in the claim or specific services on the claim being denied CHAMPUS cost-sharing.

(ii) A pattern of failure to adequately document medical care will result in episodes of care being denied CHAMPUS cost-sharing.

(iii) Cursory notes of a generalized nature that do not identify the specific treatment and the patient's response to the treatment are not acceptable.

(iv) The documentation of medical records must be legible and prepared as soon as possible after the care is rendered. Entries should be made when the treatment described is given or the observations to be documented are made. The following are documentation requirements and specific time frames for entry into the medical records:

(A) General requirements for acute medical/surgical services:

(*1*) Admission evaluation report within 24 hours of admission.

(*2*) Completed history and physical examination report within 72 hours of admission.

(*3*) Registered nursing notes at the end of each shift.

(*4*) Daily physician notes.

(B) Requirements specific to mental health services:

(*1*) Psychiatric admission evaluation report within 24 hours of admission.

(*2*) History and physical examination within 24 hours of admission; complete report documented within 72 hours for acute and residential programs and within 3 working days for partial programs.

(*3*) Individual and family therapy notes within 24 hours of procedure for acute, detoxification and Residential Treatment Center (RTC) programs and within 48 hours for partial programs.

(*4*) Preliminary treatment plan within 24 hours of admission.

(*5*) Master treatment plan within 72 hours of admission for acute care, 10 days for RTC care, 7 days for full-day partial programs and within 5 days for half-day partial programs.

(*6*) Family assessment report within 72 hours of admission for acute care and 7 days for RTC and partial programs.

(*7*) Nursing assessment report within 24 hours of admission.

(*8*) Nursing notes at the end of each shift for acute and detoxification programs; every ten visits for partial hospitalization; and at least once a week for RTCs.

(*9*) Daily physician notes for intensive treatment, detoxification, and rapid stabilization programs; twice per week for acute programs; and once per week for RTC and partial programs.

(*10*) Group therapy notes once per week.

(*11*) Ancillary service notes once per week.

Note: A pattern of failure to meet the above criteria may result in provider sanctions prescribed under § 199.9.

* * * * *

(5) * * *

(i) As a condition precedent to the cost-sharing of benefits under this part or pursuant to a review or audit, whether the review or audit is prospective, concurrent, or retroactive, OCHAMPUS or CHAMPUS contractors may request, and shall be entitled to receive, information from a physician or hospital or other person, institution, or organization (including a local, state, or Federal Government agency) providing services or supplies to the beneficiary for whom claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance, testing, monitoring, examination, diagnosis, treatment, or services and supplies furnished to a beneficiary and, as such, shall be necessary for the accurate and efficient administration of CHAMPUS benefits. This may include requests for copies of all medical records or documentation related to the episode of care. In addition, before a determination on a request for preauthorization or claim of benefits is made, a beneficiary, or sponsor, shall provide additional information relevant to the requested determination, when necessary. The recipient of such information shall hold such records confidential except when:

* * * * *

(ii) For the purposes of determining the applicability of and implementing the provisions of §§ 199.8 and 199.9, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS or CHAMPUS fiscal intermediaries, without consent or notice to any beneficiary or sponsor, may release to or obtain from any insurance company or other organization, governmental agency, provider, or person, any information with respect to any beneficiary when such release constitutes a routine use duly published in the **Federal Register** in accordance with the Privacy Act.

(iii) Before a beneficiary's claim of benefits is adjudicated, the beneficiary or the provider(s) must furnish to CHAMPUS that information which is necessary to make the benefit determination. Failure to provide the requested information will result in denial of the claim. A beneficiary, by submitting a CHAMPUS claim(s) (either a participating or nonparticipating claim), is deemed to have given consent to the release of any and all medical records or documentation pertaining to the claims and the episode of care.

(c) * * *

(1) * * *

(iii) * * *

Note: If the care was rendered to a minor and a custodial parent or legal guardian requests information prior to the minor turning 18 years of age, medical records may still be released pursuant to the signature of the parent or guardian, and claims information may still be released to the parent or guardian in response to the request, even though the beneficiary has turned 18 between the time of the request and the response. However, any follow-up request or subsequent request from the parent or guardian, after the beneficiary turns 18 years of age, will necessitate the authorization of the beneficiary (or the beneficiary's legal guardian as appointed by a cognizant court), before records and information can be released to the parent or guardian.

* * * * *

(2) * * *

(i) * * *

(A) Certifies that the specific medical care listed on the claim form was, in fact, rendered to the specific beneficiary for which benefits are being claimed, on the specific date or dates indicated, at the level indicated and by the provider signing the claim unless the claim otherwise indicates another individual provided the care. For example, if the claim is signed by a psychiatrist and the care billed was rendered by a psychologist or licensed social worker, the claim must indicate both the name and profession of the individual who rendered the care.

* * * * *

(i) * * *

(3) *Fraudulent billing.* Claims that are submitted to CHAMPUS that include a billing for services, supplies, or equipment not furnished, or used by, CHAMPUS beneficiaries will be denied in their entirety, regardless of the

relative amount of the fraudulent billing compared to the total billings. Claims that have been CHAMPUS cost-shared that are retroactively audited or reviewed and are found to include fraudulent billings may be denied in part or in total based on the discretion of the Director, OCHAMPUS, or a designee.

5. Section 199.10 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

* * * * *

§ 199.10 Appeal and hearing procedures.

(a) * * *

(2) * * *

(ii) *Representative.* Any party to the initial determination may appoint a representative to act on behalf of the party in connection with an appeal. Generally, the parent of a minor beneficiary and the legally appointed guardian of an incompetent beneficiary shall be presumed to have been appointed representative without specific designation by the beneficiary. The custodial parent or legal guardian (appointed by a cognizant court) of a minor beneficiary may initiate an appeal based on the above presumption. However, should a minor beneficiary turn 18 years of age during the course of an appeal, then any further requests to appeal on behalf of the beneficiary must be from the beneficiary or pursuant to the written authorization of the beneficiary appointing a representative. For example, if the beneficiary is 17 years of age and the sponsor (who is a custodial parent) requests a formal review, absent written objection by the minor beneficiary, the sponsor is presumed to be acting on behalf of the minor beneficiary. Following the issuance of the formal review, the sponsor requests a hearing; however if, at the time of the request for a hearing, the beneficiary is 18 years of age or older, the request must either be by the beneficiary or the beneficiary must appoint a representative. The sponsor, in this example, could not pursue the request for hearing without being appointed by the beneficiary as the beneficiary's representative.

* * * * *

Dated: November 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-28179 Filed 11-25-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD-90-064c]

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard has been petitioned by the Federal Highway Administration, the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works to permanently amend the regulations governing operation of the Woodrow Wilson Memorial Bridge across the Potomac River, mile 103.8, at Alexandria, Virginia. As part of the rulemaking process, the Coast Guard is considering several alternative opening schedules as well as the schedule proposed by the petitioners. This temporary rule is being issued to evaluate the impacts of a variation of one of the other alternatives previously evaluated under an earlier temporary rule for its impact on both marine and highway traffic.

DATES: This temporary rule is effective from November 28, 1991, through January 27, 1992, unless sooner terminated. Comments must be received on or before January 13, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and CAPT M. K. Cain, Project Attorney.

Discussion of Temporary Rule

This temporary rule is being issued to evaluate a variation of one of the alternative opening schedules that was previously evaluated by the Coast Guard in response to a request from the Federal Highway Administration, the Virginia and Maryland Departments of Transportation, and the District of Columbia Department of Public Works, to permanently change the regulations for the Woodrow Wilson Memorial Bridge by further restricting the hours during which the bridge may open for vessel traffic. This variation makes a distinction between deep-draft commercial vessels and other commercial vessels. It slightly extends the hours in the early morning and evening during which deep-draft vessels may request an opening of the drawbridge. This change is being considered because commercial shipping interests and the Virginia Pilots Association have stated deep-draft vessels require more leeway for requesting openings than other vessels because they must plan their transits of the river to coincide with high tide stages. Due to shoaling in portions of the river, these vessels require high tide to safely transit these portions of the river. Deep draft vessels are those with a draft of over 20 feet.

This temporary rule is for evaluation purposes only and will be effective for a 60 day period beginning on November 28, 1991. The impact of this proposal on highway and marine traffic during this period will be evaluated to determine if it will result in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. Data will be collected during the period to document the time and duration of draw openings and length of any resulting vehicle backups. If this rule results in an unforeseen disruption of traffic it may be withdrawn sooner than 60 days.

The Woodrow Wilson Bridge operated under temporary rules from August 2, 1990, through May 31, 1991, to facilitate repairs to the bridge. Repairs were completed by May 31, 1991. Normally, operation of the bridge would revert to the permanent rule in 33 CFR 117.255. However, it is apparent that these will not provide a satisfactory balance between the needs of today's vehicular traffic and the needs of vessels. Therefore, the Coast Guard issued a temporary deviation from the permanent rules under the provisions of 33 CFR 117.43. That temporary rule with request for comments was issued to evaluate one of the alternative opening schedules being considered for a permanent change in the regulations. The rule was published in the Federal Register (56 FR 25369) on June 4, 1991. It was effective from June 1, 1991, through July 30, 1991. Comments were accepted through July 15, 1991. On July 9, 1991, the Coast Guard issued a second temporary rule with request for comments under the provisions of 33 CFR 117.43 to

evaluate another of the alternative opening schedules being considered for a permanent change in regulations. That rule was published in the **Federal Register** (56 FR 35816) on July 29, 1991. It was effective from July 31, 1991, through September 28, 1991. Comments were accepted through September 13, 1991. On September 23, 1991, the Coast Guard issued a third temporary rule with request for comments under the provisions of 33 CFR 117.43 to evaluate another alternative opening schedule being considered. That rule was published in the **Federal Register** (56 FR 49145) on September 27, 1991. It was effective from September 29, 1991, through November 27, 1991. Comments were accepted through November 12, 1991.

Before any permanent changes are made in the operating rule for the Woodrow Wilson Bridge, a notice of proposed rulemaking will be published and comments on all alternatives under consideration will be solicited.

Comments are also invited concerning any particular problems experienced with this temporary schedule. These comments will be evaluated and modifications may be made or an alternate temporary schedule of openings may be established for the purpose of further evaluation. All comments received will also be considered along with those received in connection with the permanent operating schedule rule change being considered. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rules. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

This temporary rule serves the immediate interests of highway traffic with no expected significant adverse impacts on marine traffic. It is a variation of one of the alternative opening schedules previously evaluated and is the fourth in a series of temporary rules being evaluated to gather information for drafting a new permanent rule. For these reasons, pursuant to 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking. Further, because the Coast Guard agrees that it is not acceptable to revert to the existing permanent rule on the expiration of the current temporary deviation on November 27, 1991, it finds, pursuant to 5 U.S.C. 553(d), that good cause exists for making this rule effective in less than 30 days after the date of publication in the **Federal Register.**

Regulatory Evaluation

This temporary rule is considered to be non major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are temporary and may be withdrawn earlier than scheduled. They are not expected to have any substantial effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

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 temporary rule does not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.42.

2. Section 117.255 is temporarily amended by revising paragraph (a)(2) to read as follows: (This is a temporary rule and will not appear in the Code of Federal Regulations).

§ 117.255 Potomac River.

(a) * * *

(2) Need not open:

(i) Except as provided in paragraph (a)(1) of this section, for the passage of any vessel unless at least 2 hours advance notice is given to the bridgetender at (202) 727–5522.

(ii) For the passage of any vessel from 5 a.m. to 9 a.m. and from 2 p.m. to 6 p.m., on Mondays through Fridays other than Federal holidays.

(iii) For the passage of any vessel from 2 p.m. to 7 p.m. on Saturdays, Sundays, and Federal holidays.

(iv) For the passage of any vessel other than a commercial vessel with a draft of over 20 feet from 4 a.m. to 5 a.m., from 9 a.m. to 10 a.m., and from 6 p.m. to 8 p.m., on Mondays through Fridays other than Federal holidays.

(v) For the passage of recreational vessels from 4 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, on Mondays through Fridays other than Federal holidays.

(vi) For the passage of recreational vessels from 6 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, and one opening at 9 p.m., if requested, on Saturdays, Sundays, and Federal holidays.

(vii) This temporary rule is effective from November 28, 1991, through January 27, 1992.

* * * * *

Dated: November 20, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 91–28480 Filed 11–22–91; 2:37 pm]

BILLING CODE 4910–14–M

PANAMA CANAL COMMISSION

35 CFR Part 60

RIN 3207–AA 29

Classified Information

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This final rule amends 35 CFR part 60 to reflect the procedures incorporated into the Panama Canal Commission's information security program subsequent to the appointment of a non-U.S. citizen as Administrator and a U.S. citizen as Deputy Administrator. The purpose of this revision is to identify the officials currently responsible for complying with the provisions of Executive Order 12356 regarding the identification, classification, declassification, safeguarding and destruction of security information affecting the national defense and foreign relations of the United States.

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, Telephone: 202–634–6441 or Mrs. Carolyn H. Twohy, Chief, Administrative Services Division, Agency Records Officer, Telephone in Balboa Heights, Republic of Panama: 011–507–52–7757.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission is revising its regulations dealing with procedures for safeguarding and handling of classified information to reflect changes created by the appointment of a non-U.S. citizen as the Administrator and a U.S. citizen as the Deputy Administrator of the Commission. As a result of these appointments, the Deputy Administrator has assumed those responsibilities previously allocated to the Administrator, while the Director, Office of Executive Administration retains his authority as the senior official directing and administering the information security program. Also, as a result of the appointment of a non-U.S. citizen as Personnel Director, the Deputy Personnel Director has been designated the official responsible for directing the conduct of investigations of individuals for the issuance of security clearances in accordance with the standards and criteria of E.O. 10450.

This is not a major rule for the purposes of Executive Order 12291 and it will not have a significant impact on a number of small business entities under the Regulatory Flexibility Act. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. The publication of this notice is made in accordance with the Administrative Procedure Act 5 U.C.S. 551 et. seq.

List of Subjects in 35 CFR Part 60

Classified Information, Security Information, Panama Canal.

For the reasons set forth in the preamble, the Panama Canal Commission amends 35 CFR Part 60 to read as follows:

PART 60—CLASSIFIED INFORMATION

1. The authority citation for part 60 continues to read as follows:

Authority: E.O. 12356, 47 FR 14874; 32 CFR part 2001 (Directive No. 1, Information Security Oversight Office), 47 FR 27836; E.O. 10450, 18 FR 2489; 22 U.S.C. 3611.

2. Section 60.1(b) is amended by revising paragraph (b)(8) and adding paragraphs (b)(9) and (b)(10) to read as follows:

§ 60.1 Authority, scope, and definitions.

* * * * *

(b) * * *

(8) *Deputy Administrator* means the U.S. citizen incumbent of that position or the U.S. citizen temporarily designated to assume the responsibilities set forth under this part. In the event that the regular incumbent is not serving in the position, a senior U.S. citizen official of the Commission listed in § 60.4(a) will designate an eligible U.S. citizen to assume the duties and responsibilities of the position as set forth in this part.

(9) *Director, Office of Executive Administration,* "Deputy Director, Office of Executive Administration," "Deputy Personnel Director," and "Chief, Administrative Services," are similarly defined to mean the U.S. citizen(s) temporarily designated to assume the responsibilities of the position as set forth in this part.

(10) *DUSD(P)* refers to the Deputy Under Secretary of Defense (Policy).

3. Section 60.2 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 60.2 Compliance with Executive Order 12356 and implementing directives.

* * * * *

(b) * * *

(1) Require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and

* * * * *

(c) The Deputy Personnel Director will direct the conduct of investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450.

4. Section 60.3(f)(3)(ii) is revised to read as follows:

§ 60.3 Classification levels, categories, and limitations.

* * * * *

(f) * * *

(3) * * *

(ii) The information may reasonably be recovered. These reclasssification actions shall be reported promptly to the Office of the Deputy Under Secretary of Defense (Policy) for subsequent reporting to the Director of the Information Security Oversight Office.

* * * * *

5. Section 60.4(a)(1) and (2) are revised and paragraph (a)(3) is added to read as follows:

§ 60.4 Limitations on original classification authority.

(a) * * *

(1) The Deputy Administrator;

(2) The Director, Office of Executive Administration; and

(3) The Secretary, Washington Office.

* * * * *

6. In § 60.6 the introductory text of paragraph (d) is revised to read as follows:

§ 60.6 Requirements for classification guides.

* * * * *

(d) The Deputy Administrator may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. A decision to waive the requirement should be based, at minimum, on an evaluation of the following factors:

* * * * *

7. In § 60.8 paragraph (b) and the introductory text of paragraph (m) are revised to read as follows:

§ 60.8 Identification and markings.

* * * * *

(b) Each classified document shall by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. The Deputy Administrator may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

* * * * *

(m) National security information that is transmitted electronically shall be marked as follows:

* * * * *

8. In § 60.9 paragraph (f) is revised to read as follows:

§ 60.9 Declassification and downgrading.

* * * * *

(f) Classified information accessioned into the National Archives of the United States from the Commission shall be

declassified or downgraded by the Archivist of the United States in accordance with Executive Order 12356, the directives of the Information Security Oversight Office, and guidelines established by the Director, Office of Executive Administration of the Panama Canal Commission. Such guidelines shall be reviewed and updated, if necessary, at least every five years, unless earlier review is requested by the Archivist.

9. In § 60.10 paragraphs (a), (d)(4) (i) and (e) are revised to read as follows:

§ 60.10 Access to classified information.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has been made and that such access is essential to the accomplishment of lawful and authorized Government purposes. The determinations of eligibility and trustworthiness, referred to in this part as a security clearance, shall be based on such investigations as the Panama Canal Commission may require. The Deputy Personnel Director shall be responsible for conducting investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450, and will maintain a list showing the level of security clearances granted to each person. Security clearances will be granted by the Director, Office of Executive Administration, as provided in § 60.14 of this part.

* * * * *

(d) * * *

(4) * * *

(i) Written agreements from the requesters to safeguard the information to which they are given access, as permitted by Executive Order 12356 and this part; and

* * * * *

(e) If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requesters shall be so notified and the fees may be imposed.

* * * * *

10. In § 60.11 paragraphs (c) and (d) are revised to read as follows:

§ 60.11 Top Secret, Secret, and Confidential Control Officer.

* * * * *

(c) The Director, Office of Executive Administration shall act on all suggestions and complaints received by the Commission with respect to the administration of Executive Order 12356 and this part, and may also recommend to the Deputy Administrator appropriate administrative actions or sanctions to correct abuse or violation of any provision of that Order or directives under it. The Director of the Information Security Oversight Office shall be promptly informed by the agency when such violations occur.

(d) To the extent required by applicable laws and agency regulations, the Deputy Administrator shall report to the Attorney General evidence reflected in classified information of possible violations of Federal criminal law by an agency employee and of possible violations by any other person of those Federal criminal laws specified in guidelines adopted by the Attorney General.

* * * * *

11. In § 60.12 paragraphs (a), (d)(3), and (e) are revised to read as follows:

§ 60.12 Mandatory review for declassification.

(a) Any United States citizen, permanent resident alien, federal agency, or the government of a U.S. state or municipality may request that classified information be reviewed for declassification by the originating agency and released. Such requests must be submitted in writing to the Chief, Administrative Services Division, Panama Canal Commission, Unit 2300, APO AA 34011 (or Panama Canal Commission, Balboa Heights, Republic of Panama). In accordance with section 9701 of title 31, United States Code, fees may be applied to any requests for declassification and release. A request need not identify the information requested by date or title, but must describe the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. Whenever a request is deficient in its description of the information sought, the Chief, Administrative Services Division shall notify the requester that, unless additional identifying information is provided or the scope of the request is narrowed, the Commission will take no further action on the request.

* * * * *

(d) * * *

(3) Upon the denial or a partial denial of a request, the Chief, Administrative Services Division shall reply to the requester and provide a brief statement of the reasons for the denial, a notice of the right to appeal the decision to the Director, Office of Executive Administration and a notice that the appeal must be in writing and must be received by the Commission within sixty (60) days of receipt of the decision letter by the requester. Appeals should be addressed to: Director, Office of Executive Administration, Panama Canal Commission, Unit 2300, APO AA 34011 (or Panama Canal Commission, Balboa Heights, Republic of Panama).

(e) Within thirty (30) days after its receipt of a proper appeal against an initial decision not to declassify information, the Director, Office of Executive Administration shall make and dispatch the decision whether the information should be declassified. If the Director, Office of Executive Administration is the original classification authority of the information under appeal, the Deputy Administrator shall determine whether the information may be declassified. The Director, Office of Executive Administration shall, after the decision, promptly make available to the requester any information that is declassified and which is otherwise releasable. If continued classification of the requested information is necessary, the requester shall be notified of that decision and the reasons therefor. If requested, the appeal determination shall also be communicated to any referring agency.

* * * * *

12. In § 60.13 paragraphs (b), (d), and (e)(1) are revised to read as follows:

§ 60.13 Custody and storage.

* * * * *

(b) Each bureau director and chief of an independent unit (or classified security control officer as designated by the Director, Office of Executive Administration) shall be responsible for assuring that all classified information within that official's organization is used, processed, stored, and transmitted only under conditions which will provide adequate protection and prevent access by, or dissemination to, unauthorized persons. Containers, vaults, alarm systems, and associated security devices procured after the effective date of this part for the storage and protection of classified information shall be in conformance with the standards and specifications published by the General Services Administration and, to the maximum extent practicable, be of the type designated on its Federal Supply Schedule.

* * * * *

(d) Each bureau director and chief of an independent unit (or classified security control officer) is responsible

for assuring that all personnel within that official's organization, having access to classified information, have a security clearance issued by the Director, Office of Executive Administration, see § 60.14 and § 60.16.

(e)(1) Combinations of all repositories containing classified information shall be changed at least annually and forwarded in double-sealed envelopes to the Office of Executive Administration. The double-sealed envelopes shall be classified no lower than the highest category of information contained in the repositories. Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. Bureau directors and heads of independent units (or classified security control officers) shall ensure that combinations of dial-type locks shall be changed whenever there is reason to suspect possible compromise of the current combination.

* * * * *

13. Section 60.14(a) is revised to read as follows:

§ 60.14 Security investigations; training and orientation of employees.

(a) Requests for security clearances, including changes in the level of clearances, will be forwarded to the Office of Personnel Administration for background investigations and security checks. The Deputy Personnel Director shall ensure that all necessary investigations are completed, and will provide a recommendation on the issuance of a security clearance to the Office of Executive Administration. The Director, Office of Executive Administration, in consideration of all available information, will determine if a security clearance may be issued, or if the level may be changed, and establish the expiration date of the clearance.

* * * * *

14. Section 60.15 is revised to read as follows:

§ 60.15 Debriefing upon termination of employment.

(a) Bureau directors and heads of independent units (or classified security control officers as designated by the Director, Office of Executive Administration) shall be responsible for notifying the Office of Executive Administration whenever it is necessary that an employee be briefed or debriefed. Such notification should be in writing and be at least sixty (60) days, or as long as possible, in advance.

(b) Bureau directors and heads of independent units (or classified security control officers) shall ensure that debriefings are accomplished for any employee whose employment is terminated, or scheduled to be terminated, or when a temporary separation from employment (not to include leave) for sixty (60) days or more has occurred or is scheduled, whenever the employee has had access to classified information within the last twelve calendar months of his employment.

15. Section 60.17(b) and (c) are revised and paragraph (d) is added to read as follows:

§ 60.17 Loss or compromise; destruction of nonrecord classified information.

* * * * *

(b) The Deputy Administrator or the Director, Office of Executive Administration shall initiate a damage assessment whenever there has been a compromise of classified information originated by the Commission that, in his judgment, can reasonably be expected to cause damage to the national security. Damage assessments shall be in writing and shall conform to the guidelines established by the Information Security Oversight Office, as provided in 32 CFR 2001.47(b).

(c) Nonrecord classified information that has served its intended purpose shall be destroyed in accordance with procedures and methods approved by the Deputy Administrator or the Director, Office of Executive Administration. The method of destruction selected must preclude recognition or reconstruction of the classified information or material.

(d) The Office of Executive Administration is the only office within the Commission authorized to destroy classified documents which have been recorded as received and assigned a control number.

Dated: October 18, 1991.

Gilberto Guardia F.,

Administrator.

[FR Doc. 91-28389 Filed 11-25-91; 8:45 am]

BILLING CODE 3640-04-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 204, and 211

[Docket No. 91-4]

Copyright Office; Fees

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: The Copyright Office is making housekeeping amendments correcting the fees appearing in its regulations so that they correspond to the fee schedule enacted into law by the "Copyright Fees and Technical Amendments Act of 1989," Public Law 101-318, 104 Stat. 287, July 3, 1990.

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone number (202) 707-8380.

SUPPLEMENTARY INFORMATION: The "Copyright Fees and Technical Amendments Act of 1989" increased the fees for all statutory fee services offered by the Copyright Office. In addition to increasing the fees, the Act also changed the manner in which the fees will be calculated in the case of recordation of transfers and other documents as provided by section 205, and for the issuance of certifications other than additional certificates of registration.

For the recordation, provided by section 205, of a transfer of copyright ownership or other document, the old fee was $10 for a document of six pages or less containing only one title. An additional 50 cents was charged for each page over six and for each title over one. Under the new schedule, the fee is $20 for a document covering one title regardless of the number of pages plus $10 for each group of not more than 10 additional titles.

For the issuance of certifications, other than an additional certificate of registration, the old fee was a flat $4.00. Under the new fee schedule, the fee will be $20 for each hour or fraction of an hour consumed with respect thereto.

We are making the technical adjustments necessary to references in the regulations to recordation of documents and to searches of the public record, in order to make the regulations consistent with the new statutory fee schedule. The following parts of the regulations are adjusted: Part 201 with respect to recordation of documents in

general, notices of termination, agreements between copyright owners and public broadcasting entities, and contracts by cable systems located outside the 48 contiguous states; part 201 regarding notices of intention and royalty accounting statements pursuant to 17 U.S.C. 115; part 202 with respect to the general fee for recordation of a document and the fee for renewal registration; part 203 with respect to the fee for preparing copies of records under the Freedom of Information Act; and part 211 with respect to the fees for services associated with registration and recordation of mask work and mask work documents, respectively.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that these regulations will have no significant impact on small business.

List of Subjects

37 CFR Part 201

Cable; Copyright; Fees.

37 CFR Part 202

Copyright; Fees; Registration.

37 CFR Part 203

Freedom of Information Act.

37 CFR Part 204

Privacy Act.

37 CFR Part 211

Computer technology.

[1]The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

Final Regulations

In consideration of the foregoing, parts 201, 202, 203, 204, and 211 of 37 CFR chapter II are amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116.

2. Section 201.4 is amended by revising paragraph (d) to read as follows:

§ 201.4 Recordation of transfers and certain other documents.

* * * * *

(d) *Fees.* For a document covering not more than one title, the basic recordation fee is $20. For additional titles, a charge of $10 is added for each group of not more than 10 titles.

* * * * *

§ 201.5 [Amended]

3. In § 201.5, paragraph (c)(1) introductory text and footnote 2 remove the fee of "$10," and add in its place "$20."

4. Section 201.9 is amended by revising paragraph (b) to read as follows:

§ 201.9 Recordation of agreements between copyright owners and public broadcasting entities.

* * * * *

(b) For a document covering not more than one title the basic recordation fee is $20. For additional titles, a charge of $10 is added for each group of not more than 10 titles.

* * * * *

5. Section 201.10 is amended by revising paragraph (f)(2) to read as follows:

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

* * * * *

(f) *Recordation.* * * *

(2) For a document covering not more than one title the basic recordation fee is $20. For additional titles, a charge of $10 is made for each group of not more than 10 titles.

* * * * *

6. Section 201.12 is amended by revising paragraph (b) to read as follows:

§ 201.12 Recordation of certain contracts by cable systems located outside of the forty-eight contiguous states.

* * * * *

(b) For a document covering not more than one title the basic recordation fee is $20. For additional titles, a charge of $10 is added for each group of not more than 10 titles.

* * * * *

§ 201.18 [Amended]

7. In § 201.18, paragraph (e)(1) remove the fee of "$6.00" and add in its place "$12." In paragraphs (e)(1) and (e)(3) remove the fee of "$4.00" and add in its place "$8."

§ 201.19 [Amended]

8. In § 201.19, paragraphs (e)(7)(ii)(D) and (f)(7)(iii)(D) remove the fee of "$4.00" and "$4" respectively and add in each place "$8."

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.19, 202.20, and 202.21 are also issued under 17 U.S.C. 407 and 408.

§ 202.3 [Amended]

2. In § 202.3 paragraphs (b)(4)(ii)(B), (b)(5)(ii)(C), and (C)(2) remove the fee of "$10," and add in its place "$20."

§ 202.17 [Amended]

3. In § 202.17, paragraph (e)(2)(ii) remove the fee of "$6," and add in its place "$12."

§ 202.19 [Amended]

4. In § 202.19, paragraph (f)(3) remove the fee of "$2," and add in its place "$4."

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

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

Authority: Copyright Act, Pub. L. 94–553; 90 Stat. 2541–2602 (17 U.S.C. 101–710).

§ 203.6 [Amended]

2. In § 203.6, paragraph (b)(1) remove the fee of "$4," and add in its place "$8"; in paragraph (b)(2) remove the ".45 per page" and add in its place, "a minimum fee of $7 for up to 15 pages and $.45 per page over 15." In paragraph (b)(3) remove the fee of "$10" and add in its place "$20"; paragraph (b)(4) is revised to read: "For the issuance of any certification, $20 for each hour or fraction of an hour consumed in respect thereto."

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

1. The authority citation for part 204 continues to read as follows:

Authority: Copyright Act, Pub. L. 94–553; 90 Stat. 2541–2602 (17 U.S.C. 101–710).

§ 204.6 [Amended]

2. In § 204.6, paragraph (a), remove the language "computed at the rate of $.45 per page for 24 pages or less, and $.40 per page for 25 pages or more with a minimum fee of $6.00" and add in its place "a minimum of $7 for up to 15 pages and $.45 per page over 15."

PART 211—MASK WORK PROTECTION

1. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 701; 908.

2. In § 211.3, paragraph (a) is revised to read as follows:

§ 211.3 Mask work fees.

(a) The following fees or charges are established by the Register of Copyrights for services relating to mask works:

(1) For filing an application for registration of a mask work claim.... $20.00

(2) For the recordation of a document covering not more than one title, the basic recordation fee is $20. For additional titles over one, a charge of $10 is added for each group of not more than 10 titles;

(3) For a certified copy of a certificate of registration, $8;

(4) For certifications of photocopies of other Copyright Office records, $20 for each hour or fraction of an hour consumed with respect thereto;

(5) For issuance of a receipt of deposit, $4;

(6) For each hour or fraction of an hour consumed in making and reporting a routine search, or for any related services, $20;

(7) For special handling of an application for registration of a claim, $200;

(8) For any special services not listed above requiring a substantial amount of time or expense, the fees will be fixed on the basis of the cost of providing the service.

* * * * *

Dated: November 12, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James Billington,

The Librarian of Congress.

[FR Doc. 91–27979 Filed 11–25–91; 8:45 am]

BILLING CODE 1410–07–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–4034–9]

Standards of Performance for New Stationary Sources; Delegation of Authority to Knox County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On July 26, 1991, the Knox County Department of Air Pollution Control in the State of Tennessee, requested delegation of authority for implementation and enforcement of several standards in 40 CFR part 60, New Source Performance Standards (NSPS).

EFFECTIVE DATE: The effective date of delegation is November 1, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation may be examined during normal business hours at the Agency's Regional Office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to the Knox County Department of Air Pollution Control, City/County Building, suite 459, Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Leslie Cox of the EPA Region IV Air Programs Branch at the above address and telephone number (404) 347–2864 or (FTS) 257–2864.

SUPPLEMENTARY INFORMATION: Sections 111(c)(1) and 112(d)(1) of the Clean Air Act as amended, authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On July 26, 1991, the Know County Department of Air Pollution Control requested delegation of several new and revised NSPS standards. The following standards were requested by Knox County:

40 CFR Part 60 Subpart

Ca—Municipal Waste Combustors
Dc—Small Industrial-Commercial-Institutional Steam Generating Units
Ea—Municipal Waste Combustors
DDD—Polypropylene, Polyethylene, Polystyrene and Poly (ethyleneterephthalate) Manufacturing Industries
III—Volatile Organic Compound Emissions from the Synthetic, Organic, Chemical Manufacturing Industries (SOCMI), Air Oxidation Unit Process
NNN—Volatile Organic Compound Emissions from the Synthetic, Organic, Chemical Manufacturing Industries (SOCMI), Distillation Operations

After a thorough review of the categories requested for delegation, the Regional Administrator determined that delegation of NSPS, subparts Ca, Dc, Ea, DDD, III, and NNN was appropriate with all the conditions set forth in the initial delegation letters of May 20, 1977; December 13, 1985; March 3, 1986; July 1, 1986; June 1, 1988; May 16, 1989; December 14, 1989; and October 29, 1990, and in EPA issued guidance, including a May 20, 1988, letter from EPA to state and local agencies.

EPA, thereby, delegated its authority for 40 CFR part 60, subpart Ca, Dc, (excluding § 60.48c(a)(4)), Ea, DDD (excluding § 60.562–2(c)), III (excluding § 60.613(e)), and NNN (excluding § 60.663(e)) on November 1, 1991.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 4 of Executive Order 12291.

Authority: Section 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: November 14, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91–28385 Filed 11–25–91; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–39

[FPMR Amendment G–94]

Transportation and Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends 41 CFR part 101–39 to reflect changes to the General Services Administration's Interagency Fleet Management System (IFMS) that were primarily the result of Public Law 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985, the IFMS vehicle consolidation effort, and the general restructuring of the IFMS to provide more economical vehicle services at the lowest cost to the Federal Government.

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Michael W. Moses, Sr., Fleet Management Division (703–557–1273).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximize the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–39

Interagency fleet management systems.

For the reasons set forth in the preamble, 41 CFR part 101–39 is amended as follows:

PART 101–39—INTERAGENCY FLEET MANAGEMENT SYSTEMS

1. The authority citation for part 101–39 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2–3. Section 101–39.000 is revised to read as follows:

§ 101–39.000 Scope of part.

This part prescribes policies governing the establishment and operation of interagency fleet management systems and operating procedures applicable to the General Services Administration (GSA) Interagency Fleet Management System.

4. Section 101–39.003 is amended by revising paragraph (b) to read as follows:

§ 101–39.003 Financing.

* * * * *

(b) When an agency other than GSA operates an interagency fleet management system, the financing and accounting methods shall be developed by GSA in cooperation with the agency concerned.

5. Section 101–39.004 is revised to read as follows:

§ 101–39.004 Optional operations.

Nothing in this part shall preclude the establishment or operation of interagency fleet management systems by GSA or by other agencies which are to be operated on the basis of optional use by executive or other agencies under arrangements worked out between the agencies concerned and GSA.

Subpart 101–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

6. Section 101–39.100 is amended by revising paragraphs (e) and (f) to read as follows:

§ 101–39.100 General.

* * * * *

(e) Except as provided in this subpart, all Government motor vehicles subsequently acquired for official purposes by fully participating agencies which are stored, garaged, or operated within the defined mandatory use service area of a fleet management system shall also be consolidated into and operated under the control of that system.

(f) Fleet management systems established under this subpart provide for furnishing motor vehicles and related services to executive agencies. So far as practicable, these services will also be furnished to any mixed-ownership corporation, the District of Columbia, or a contractor authorized under the provisions of Federal Acquisition Regulation, 48 CFR part 51, subpart 51.2, upon request. Such services may be furnished, as determined by the Administrator, GSA, through the use, under rental or other arrangements, of motor vehicles of private fleet operators, commercial companies, local or interstate common carriers, or Government-owned motor vehicles, or combinations thereof.

7. Section 101–39.101 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 101–39.101 Notice of intention to begin a study.

The Administrator, GSA, will ascertain the possibilities of economies to be derived through the establishment of a fleet management system in a specific geographical area. After preliminary investigation, he or she will notify the head of each agency concerned at least 30 calendar days in advance of the intent to conduct a study to develop data and justification as to the feasibility of establishing a fleet management system. The notification, in writing, will include:

(a) The approximate geographical area to be included in the study, including a defined mandatory use service area and an optional use service area; and

* * * * *

8. Section 101–39.102 is amended by revising paragraph (a) to read as follows:

§ 101–39.102 Determinations.

* * * * *

(a) A description of the proposed operation (including Government-owned vehicles operated by contractors) covering the types of service and the geographic area (including the defined mandatory and optional use service areas) and executive agencies or parts of agencies to be served;

* * * * *

9. Section 101–39.102–1 is amended by revising paragraph (b) to read as follows:

§ 101–39.102–1 Records, facilities, personnel, and appropriations.

* * * * *

(b) The Administrator of General Services will furnish a copy of each determination, with a copy of the schedule of proposed transfer of motor vehicles, records, facilities, personnel, and appropriations, to the Director, OMB, and to each agency affected.

10. Section 101–39.104–1 is amended by revising the heading and paragraphs (a) and (b)(2) to read as follows:

§ 101–39.104–1 Consolidations into a fleet management system.

(a) All Government-owned motor vehicles acquired by executive agencies for official purposes which are operated, stored, or garaged within a defined mandatory use service area of an established fleet management system and other related equipment and supplies shall, when requested by the Administrator, GSA, in accordance with a determination, be transferred to the control and the responsibility of the fleet management system. Those vehicles specifically exempt by:

(1) Section 101–39.106 and § 101–39.107,

(2) In the determination establishing the fleet management system,

(3) A subsequent determination by the Administrator, GSA, or

(4) The decision of the Director, OMB, are not required to be transferred into the fleet management system. Facilities, personnel, records, and appropriations, as determined by the Director, OMB, pursuant to § 101–39.102–1, shall be included in the transfer.

(b) * * *

(2) Forward a signed copy to the Controller, Federal Supply Service, GSA;

* * * * *

11. Section 101–39.105 is revised to read as follows:

§ 101–39.105 Discontinuance or curtailment of service.

(a) If, during any reasonable period not exceeding 2 successive fiscal years, no economies or efficiencies are realized from the operation of any fleet management system, the Administrator, GSA, will discontinue the fleet management system concerned.

(b) The Administrator, GSA, may discontinue or curtail a fleet management system when he or she determines that sufficient economies or efficiencies have not resulted from the operation of that fleet management system. The Administrator, GSA, will give at least 60 calendar days notice of his or her intent to the heads of executive agencies affected and to the Director, OMB, before taking action.

12. Section 101–39.105–2 is amended by revising paragraph (a) to read as follows:

§ 101–39.105–2 Agency requests to withdraw participation.

(a) Executive agencies receiving motor vehicle services from fleet management systems may request discontinuance or curtailment of their participation after 1 year of participation, unless a different time period has been mutually agreed to, or if the need for these services ceases. Requests shall be submitted to the Administrator, GSA, with factual justification.

* * * * *

13. Section 101–39.106 is amended by revising the introductory text to read as follows:

§ 101–39.106 Unlimited exemptions.

Unlimited exemptions from inclusion in the fleet management system are granted to the specific organizational units or activities of executive agencies listed below. Unlimited exemptions do not preclude agencies from requesting fleet management services, if available, under optional use arrangements. Such optional use services must be authorized under the provisions of Executive Order 10579 and 40 U.S.C. 472.

* * * * *

14. Section 101–39.107 is amended by revising paragraphs (a) and (b) to read as follows.

§ 101–39.107 Limited exemptions.

* * * * *

(a) Special-purpose motor vehicles. Motor vehicles acquired for special purposes and which, because of special design, use, or fixed special equipment, cannot advantageously be included in a consolidated operation; or

(b) Motor vehicles operated outside the defined geographical area of the fleet management system. Motor vehicles which are operated almost entirely outside the defined mandatory use area of the fleet management system.

Subpart 101–39.2—GSA Interagency Fleet Management System Services

15. The heading for subpart 101–39.2 is revised as set forth above.

16. Sections 101–39.200, 101–39.201, 101–39.202, 101–39.203, and 101–39.204 are revised to read as follows:

§ 101–39.200 Scope.

This subpart defines the procedures for acquiring motor vehicles and related services provided by the General Services Administration (GSA) Interagency Fleet Management System (IFMS). Local transportation services for Government personnel and property may be provided by the GSA IFMS to efficiently meet the authorized requirements of participating agencies. These services may be furnished through commercial rental companies, private sector fleet operators, local or interstate common carriers, the Government, or a combination of the above.

§ 101–39.201 Services available.

GSA Interagency Fleet Management System (IFMS) vehicles and services shall be used in connection with official business and incidental use as prescribed by rule by the head of the agency in conformance with section 503 of the Ethics Reform Act of 1989 (Pub. L. 101–194) only. Available GSA IFMS services may include any or all of the following:

(a) Motor vehicles for indefinite assignment;

(b) Commercial motor vehicles for daily or short-term use, exclusive of temporary duty requirements;

(c) GSA IFMS dispatch vehicles for short-term use, where available. This service is generally limited to locations where there is no commercial alternative;

(d) Shuttle run or similar services;

(e) Driver services; and

(f) Other related services, including servicing, fueling, and storage of motor vehicles.

§ 101–39.202 Contractor authorized services.

(a) Authorized contractors and subcontractors shall use related GSA Interagency Fleet Management System (IFMS) services solely for official purposes.

(b) To the extent available, authorized contractors and subcontractors may use GSA IFMS services on a reimbursable basis to provide maintenance, repair, storage, and service station services for Government-owned or -leased equipment which is not controlled by a GSA IFMS fleet management center, or for authorized contractor-owned or -leased equipment used exclusively in the performance of Government contracts.

(c) Contractor use of GSA IFMS services will be allowable only to the extent provided in Federal Acquisition Regulation, 48 CFR part 51, subpart 51.2.

(d) Use of GSA IFMS vehicles in the performance of a contract other than a cost-reimbursement contract requires preapproval by the Administrator of GSA. Such requests shall be submitted through the Director, Fleet Management Division, GSA, Attn: FBF, Washington, DC 20406.

§ 101–39.203 Obtaining motor vehicles for short-term use.

Any participating Federal agency, bureau, or activity may obtain vehicles for short-term local use through the GSA Interagency Fleet Management System (IFMS). Short-term use vehicles may be provided through Military Traffic Management Command (MTMC) agreements with commercial firms or, where available, through GSA IFMS dispatch services. This support is available for official use performed locally or within commuting distance of an employee's designated post of duty. Arrangements for these vehicles will be made by the GSA IFMS fleet management center serving the local area. The requesting agency official or employee must be authorized to place orders for vehicle support and provide a complete billing address and GSA billed office address code (BOAC) at the time an order is placed. Agencies requiring a BOAC may obtain one by contacting any General Services Administration IFMS fleet management center.

§ 101–39.204 Obtaining motor vehicles for indefinite assignment.

Motor vehicles and related services of the GSA Interagency Fleet Management System (IFMS) are provided to requesting agencies under the following procedures. When competing requests are received, priority will be given to a fully participating agency over an other than fully participating agency.

(a) Federal agencies or parts thereof that meet the following conditions are considered fully participating:

(1) All agency-owned motor vehicles have been consolidated into the supporting GSA IFMS fleet management center, and no agency-owned vehicles, with the exception of approved exemptions, are operated in the defined mandatory use service area of the supporting GSA fleet management center;

(2) No vehicles were available to consolidate, but total reliance is placed on the supporting GSA IFMS fleet management center or the GSA IFMS as a whole to meet all motor vehicle requirements, and no agency-owned vehicles are operated in the defined mandatory use service area of the supporting GSA fleet management center;

(3) The agency would otherwise qualify under paragraph (a) (1) or (2) of this section but has been authorized by GSA to purchase or commercially lease motor vehicles because the GSA IFMS was unable to supply its requirements.

(b) Fully participating agencies may request indefinite assignment of vehicles, regardless of number, from the supporting IFMS fleet management center. Assignment may be made at that level, subject to availability. If the required vehicles are not available, a written request shall be sent to the General Services Administration, Attn: FBF, Washington, DC, 20406. To be considered, the request shall include the following:

(1) Certification that concurrence has been obtained from the designated agency fleet manager or other designated headquarters-level official and that other means of transportation are not feasible or cost-effective;

(2) The number and types of vehicles required, of which passenger vehicles are limited to compact or smaller unless the agency head or designee has certified that larger vehicles are essential to the agency's mission;

(3) Location where the vehicles are needed;

(4) Date required, including earliest and latest acceptable dates;

(5) Anticipated length of assignment;

(6) Projected utilization, normally in terms of miles per month or year;

(7) Certification of funding;

(8) Billing address and billed office address code (BOAC);

(9) Agency contact, including name, address, and telephone number;

(10) Office, program, or activity requiring the vehicles;

(11) A statement that the agency does or does not request authority to commercially lease, and the anticipated duration of the lease, should GSA be unable to provide the vehicles.

(c) Federal agencies that meet the following conditions are considered other than fully participating:

(1) Vehicles have been acquired from other sources for reasons other than the inability of the GSA IFMS to supply the required vehicles, except those designated as exempt vehicles as determined by the GSA IFMS;

(2) Cost reimbursable contractors authorized to utilize GSA IFMS motor vehicles when they represent participating agencies;

(3) Other authorized users of the GSA IFMS.

(d) Other than fully participating agencies must contact the supporting GSA IFMS fleet management center to ascertain vehicle availability, regardless of the number required. If the vehicles are available, assignment shall be made. When the supporting GSA IFMS fleet management center determines that the requested vehicles are not available, the requesting activity shall make a record of contact to document compliance with the mandatory first source of supply requirement. No further authorizations from GSA are required for the agency to execute a commercial lease from sources established by the GSA Automotive Commodity Center or the agency, provided that such agency has Congressional authority to lease motor vehicles and:

(1) All applicable procurement regulations (e.g., Federal Acquisition Regulation (FAR)) and internal agency acquisition regulations are observed;

(2) The requirements of part 101–38 of this chapter regarding fuel economy, Government identification and marking, etc., are adhered to;

(3) The agency fleet manager or designee retains responsibility for fleet oversight and reporting requirements under Public Law 99–272; and

(4) Other than fully participating agencies that choose not to commercially lease may utilize the procedures for full participants in paragraph (b) of this section, on the understanding that fully participating agencies will receive priority consideration.

§ 101–39.205 [Removed and Reserved]

17. Section 101–39.205 is removed and reserved.

18. Sections 101–39.206, 101–39.207, and 101–39.208 are revised to read as follows:

§ 101–39.206 Seasonal or unusual requirements.

Agencies or activities having seasonal, peak, or unusual requirements for vehicles or related services shall inform the GSA IFMS fleet management center as far in advance as possible. Normally, notice shall be given not less than 3 months in advance of the need. Requests for vehicles for other than indefinite assignment will usually be filled for agencies participating fully with the GSA IFMS, provided resources permit. Other than fully participating agencies will normally not be accommodated for seasonal, peak, or unusual vehicle requirements.

§ 101–39.207 Reimbursement for services.

(a) GSA Regional Administrators will issue, as appropriate, regional bulletins announcing the GSA vehicle rental rates applicable to their respective regions.

(b) The using agency will be billed for GSA Interagency Fleet Management System (IFMS) services provided for under this part at rates fixed by GSA. Such rates are designed to recover all GSA IFMS fixed and variable costs. Rates will be reviewed and revised periodically to determine that reimbursement is sufficient to recover applicable costs. Failure by using agencies to reimburse GSA for vehicle services will be cause for GSA to terminate motor vehicle assignments.

(c) IFMS services provided to authorized Government contractors and subcontractors will be billed to the responsible agency unless such agency requests that the contractor be billed directly. In case of nonpayment by a contractor, GSA will bill the responsible agency which authorized the contractor's use of GSA IFMS services.

(d) Using agencies will be billed for accidents and incidents as described in § 101–39.406. Agencies may also be charged administrative fees when vehicles are not properly maintained, repaired, or when the vehicle is subject to abuse or neglect.

(e) Agencies may be charged for recovery of expenses for repairs or services to GSA IFMS vehicles which are not authorized by the GSA IFMS either through preventive maintenance notices, approval from a GSA Maintenance Control Center, or approval from a GSA fleet management center, per instructions in the operator's guide issued with each vehicle. Excess costs relating to the failure to utilize self-service gasoline pumps or the unnecessary use of premium grade gasoline may also be recovered from using agencies (see § 101–38.401–2 of this chapter).

§ 101-39.208 Vehicles removed from defined areas.

(a) Normally, vehicles shall not be permanently operated outside the geographical area served by the issuing GSA IFMS fleet management center. However, when agency programs necessitate vehicle relocation for a period exceeding 90 calendar days, the agency shall notify the issuing GSA IFMS fleet management center of the following:

(1) The location at which the vehicles are currently in use;

(2) The date the vehicles were moved to the present location; and

(3) The expected date the vehicles will be returned to the original location.

(b) When vehicles will be permanently relocated outside the area served by the issuing GSA IFMS fleet management center, the affected GSA IFMS fleet manager will ascertain if the using agency is fully participating at the new location (see § 101-39.204). If this criterion is met, the vehicle will normally be transferred to the GSA IFMS fleet management center nearest the new location. If the agency is other than a full participant, the transfer will be treated as a request for additional vehicles at the new location.

Subpart 101-39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

19. The heading for subpart 101-39.3 is revised as set forth above.

20. Section 101-39.300 is revised to read as follows:

§ 101-39.300 General.

(a) The objective of the General Services Administration (GSA) Interagency Fleet Management System (IFMS) is to provide efficient and economical motor vehicle and related services to participating agencies. To attain this objective, policies and procedures for use and care of GSA IFMS vehicles provided to an agency or activity are prescribed in this subpart.

(b) To operate a motor vehicle furnished by the GSA IFMS, civilian employees of the Federal Government shall have a valid State, District of Columbia, or Commonwealth operator's license for the type of vehicle to be operated and some form of agency identification. Non-Government personnel, such as contractors, shall have a valid license for the type of equipment to be operated when using vehicles supplied by the GSA IFMS (this may include a Commercial Driver's License). All other vehicle operators, and Federal civilian employees that have a valid civilian operator's license, but not for the type of equipment to be operated, must have in their possession an Optional Form 346, U.S. Government Motor Vehicle Operator's Identification Card, for the type of equipment to be operated. Specific regulations covering procedures and qualifications of Government motor vehicle operators are contained in 5 CFR part 930, issued by the Office of Personnel Management.

(c) To operate a motor vehicle furnished by GSA, drivers and occupants shall wear safety belts whenever the vehicle is in operation. The vehicle operator shall ensure that all vehicle occupants are wearing their safety belts prior to operating the vehicle.

(d) Reasonable diligence in the care of GSA IFMS vehicles shall be exercised by using agencies and operators at all times. Officials or employees failing to take proper care of motor vehicles issued to them may be refused further authorization to use GSA IFMS vehicles after reasonable notice has been provided by GSA to the head of the local activity concerned.

21. Section 101-39.301 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 101-39.301 Utilization guidelines.

The following guidelines may be employed by agencies requesting GSA Interagency Fleet Management System (IFMS) services or by GSA to determine whether miles traveled necessitate a full-time vehicle assignment. Agencies should be able to justify the retention of vehicles not meeting utilization guidelines described below.

* * * * *

(d) Other trucks and special purpose vehicles. Utilization guidelines for other trucks and special purpose vehicles have not been established. However, the head of the local office of the agency or his/her designee shall cooperate with GSA IFMS fleet management center personnel in studying the use of this equipment and take necessary action to ensure that it is reasonably utilized or returned to the issuing GSA IFMS fleet management center.

22. Sections 101-39.302 and 101-39.303 are revised to read as follows:

§ 101-39.302 Rotation.

GSA Interagency Fleet Management System (IFMS) vehicles on high mileage assignments may be rotated with those on low mileage assignments to assure more uniform overall fleet utilization. In cases where the continued use of a vehicle is essential but its miles traveled are not consistent with utilization guidelines, the using agency may be required to justify, in writing, retention of the vehicle. Each GSA IFMS fleet manager will decide on a case-by-case basis which vehicles, if any, will be rotated based upon vehicle type, vehicle location, location and availability of replacement vehicles, and the mission of the using agency.

§ 101-39.303 Maintenance.

In order to ensure uninterrupted operation of GSA Interagency Fleet Management System (IFMS) vehicles, safety and preventive maintenance inspections will be performed at regularly scheduled intervals as directed by GSA. Users of GSA IFMS vehicles shall comply with the safety and preventive maintenance notices and instructions issued for the vehicle.

23. Section 101-39.304 is revised to read as follows:

§ 101-39.304 Modification or installation of accessory equipment.

The modification of a GSA Interagency Fleet Management System (IFMS) vehicle or the permanent installation of accessory equipment on these vehicles may be accomplished only when approved by GSA. For the purpose of this regulation, permanent installation means the actual bolting, fitting, or securing of an item to the vehicle. Such modification or installation of accessory equipment must be considered by the agency as essential for the accomplishment of the agency's mission. The request for such modification or installation shall be forwarded to the appropriate GSA IFMS regional fleet manager for consideration. Accessory equipment or other after-market items which project an inappropriate appearance, such as radar detectors, will not be used on GSA IFMS vehicles. Decorative items (i.e., bumper stickers and decals) will not be used on IFMS vehicles unless authorized by the Director, Fleet Management Division, GSA.

24. Section 101-39.305 is revised to read as follows:

§ 101-39.305 Storage.

(a) GSA Interagency Fleet Management System (IFMS) vehicles shall be stored and parked at locations which provide protection from pilferage or damage. In the interest of economy, no cost storage shall be used whenever practicable and feasible.

(b) The cost of parking and storing GSA IFMS vehicles is the responsibility of the using agency. Prior to the procurement of other than temporary parking accommodations in urban centers (see § 101-18.102), agencies shall determine the availability of

Government-owned or -controlled parking space in accordance with the provisions of § 101–17.101–6.

25. Section 101–39.306 is amended by revising the introductory text and paragraphs (d), (g)(1), (g)(2) , and (g)(4) to read as follows:

§ 101–39.306 Operator's packet.

The GSA Interagency Fleet Management System (IFMS) will provide each system vehicle with an operator's packet containing the following information and instructions. This information should remain in the vehicle at all times, except when inconsistent with authorized undercover operations.

* * * * *

(d) The telephone numbers of responsible GSA IFMS fleet management center employees to be called in case of accident or emergency;

* * * * *

(g) * * *

(1) Standard Form 91, Operator's Report of Motor Vehicle Accident;

(2) Standard Form 94, Statement of Witness;

* * * * *

(4) Optional Form 26, Data Bearing Upon Scope of Employment of Motor Vehicle Operator.

* * * * *

26. Section 101–39.307 is revised to read as follows:

§ 101–39.307 Grounds for withdrawal of vehicle.

GSA may withdraw the issued vehicle from further use by the agency or its contractor if it is determined that the using agency has not complied with the provisions of subpart 101–39.3, that the vehicle has not been maintained in accordance with GSA IFMS maintenance standards, that the vehicle has been used improperly, or that the using agency has not reimbursed GSA for vehicle services. Improper use includes, but is not limited to, credit card abuse and misuse, continued violation of traffic ordinances, at-fault accidents, reckless driving, driving while intoxicated, use for other than official purposes, and incidental use when not authorized by the using agency.

Subpart 101–39.4—Accidents and Claims

27. Section 101–39.400 is revised to read as follows:

§ 101–39.400 General.

Officials, employees, and contractors responsible for the operation of General Services Administration (GSA) Interagency Fleet Management System (IFMS) vehicles shall exercise every precaution to prevent accidents. In case of an accident, the employee or official concerned shall comply with the procedures established by this subpart.

28. Section 101–39.401 is amended by revising the introductory text of paragraph (a), (a)(1), (b) and (c) to read as follows:

§ 101–39.401 Reporting of accidents.

(a) The operator of the vehicle is responsible for notifying the following persons immediately, either in person, by telephone, or by facsimile machine of any accident in which the vehicle may be involved:

(1) The manager of the GSA IFMS fleet management center issuing the vehicle;

* * * * *

(b) In addition, the vehicle operator shall obtain and record information pertaining to the accident on Standard Form 91, Operator's Report of Motor Vehicle Accident. Only one copy of the Standard Form 91 is required. When completed, the Standard Form 91 shall be given to the vehicle operator's supervisor. The vehicle operator shall also obtain the names, addresses, and telephone numbers of any witnesses and, wherever possible, have witnesses complete Standard Form 94, Statement of Witness, and give the completed Standard Form 94 and other related information to his or her supervisor. The vehicle operator shall make no statements as to the responsibility for the accident except to his or her supervisor or to a Government investigating officer.

(c) Whenever a vehicle operator is injured and cannot comply with the above requirements, the agency to which the vehicle is issued shall report the accident to the State, county, or municipal authorities as required by law, notify the GSA IFMS fleet manager of the center issuing the vehicle as soon as possible after the accident, and complete and process Standard Forms 91 and 91A. A completed copy of the accident report shall be forwarded to the appropriate GSA office as outlined in the vehicle operator's packet.

29. Section 101–39.402 is revised to read as follows:

§ 101–39.402 Recommendations for disciplinary action.

If a vehicle operator fails to report an accident involving a GSA Interagency Fleet Management System (IFMS) vehicle in accordance with § 101–39.401, or if the operator has a record showing a high accident frequency or cost, GSA will notify the appropriate official(s) of the operator's agency, and will advise that either failure to report an accident or poor driving record is considered by GSA to be sufficient justification for the agency to suspend the right of the employee to use a GSA IFMS vehicle.

30. Section 101–39.403 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 101–39.403 Investigation.

(a) Every accident involving a GSA Interagency Fleet Management System (IFMS) vehicle shall be investigated and a report furnished to the manager of the GSA IFMS fleet management center which issued the vehicle.

* * * * *

(c) When property damage is $500 or more and/or bodily injury is involved, the agency employing the vehicle operator shall investigate the accident within 48 hours after the actual time of occurrence. Also, GSA may investigate any accident involving an IFMS vehicle when deemed necessary. Should such investigation develop additional information, the additional data or facts will be furnished to the using agency for its information.

(d) Two copies of the complete report of the investigation, including Standard Form 91A, Investigation Report of Motor Vehicle Accident, photographs, measurements, doctor's certificate of bodily injuries, police investigation reports, operator's statement, agency's investigation reports, witnesses' statements, and any other pertinent data shall be furnished to the manager of the GSA IFMS fleet management center issuing the vehicle.

31. Section 101–39.404 is revised to read as follows:

§ 101–39.404 Claims in favor of the Government.

Whenever there is any indication that a party other than the operator of the GSA Interagency Fleet Management System (IFMS) vehicle is at fault and that party can be reasonably identified, the agency responsible for investigating the accident shall submit all original documents and data pertaining to the accident and its investigation to the servicing GSA IFMS fleet management center. The GSA IFMS regional fleet manager, or his/her representative, will initiate the necessary action to effect recovery of the Government's claim.

32. Section 101–39.405 is revised to read as follows:

§ 101–39.405 Claims against the Government.

(a) Whenever a GSA Interagency Fleet Management System (IFMS) vehicle is involved in an accident

resulting in damage to the property of, or injury to, a third party, and the third party asserts a claim against the Government based on the alleged negligence of the vehicle operator (acting within the scope of his or her duties), it shall be the responsibility of the agency employing the person who was operating the GSA IFMS vehicle at the time of the accident to make every effort to settle the claim administratively to the extent that the agency is empowered to do so under the provisions of 28 U.S.C. 2672. It shall be the further responsibility of the agency, in the event that administrative settlement cannot be effected, to prepare completely, from an administrative standpoint, the Government's defense of the claim. The agency shall thereafter transmit the complete case through appropriate channels to the Department of Justice.

(b) Except for the exclusions listed in § 101–39.406, the agency employing the vehicle operator shall be financially responsible for damage to a GSA IFMS vehicle.

(c) If a law suit is filed against the agency using a GSA Interagency Fleet Management System (IFMS) vehicle, the agency shall furnish the appropriate GSA Regional Counsel with a copy of all papers served in the action. When requested, GSA's Regional Counsel will cooperate with and assist the using agency and the Department of Justice in defense of any action against the United States, the using agency, or the operator of the vehicle, arising out of the use of a GSA IFMS vehicle.

33. Section 101–39.406 is revised to read as follows:

§ 101–39.406 Responsibility for damages.

(a) GSA will charge the using agency all costs resulting from damage, including vandalism, theft, and parking lot damage, to a GSA Interagency Fleet Management System (IFMS) vehicle which occurs during the period that the vehicle is assigned or issued to that agency, to an employee of that agency, or to the agency's authorized contractor; however, the using agency will not be held responsible for damages to the vehicle if it is determined by GSA, after a review on a case by case basis of the documentation required by § 101–39.401, that damage to the vehicle occurred:

(1) As a result of the negligent or willful act of a party other than the agency (or the employee of that agency) to which the vehicle was assigned or issued and the identity of the party can be reasonably determined;

(2) As a result of mechanical failure of the vehicle, and the using agency (or its employee) is not otherwise negligent. Proof of mechanical failure must be submitted; or

(3) As a result of normal wear and tear such as is expected in the operation of a similar vehicle.

(b) Agencies using GSA IFMS services will be billed for the total cost of all damages resulting from neglect or abuse of assigned or issued GSA IFMS vehicles.

(c) If an agency is held responsible for damages, GSA will charge to that agency all costs for removing and repairing the GSA IFMS vehicle. If the vehicle is damaged beyond economical repair, GSA will charge all costs to that agency, including fair market value of the vehicle less any salvage value. Upon request, GSA will furnish an accident report, where applicable, regarding the incident to the agency. Each agency shall be responsible for disciplining its employees who are guilty of damaging GSA IFMS vehicles through misconduct or improper operation, including inattention.

(d) If an agency has information or facts that indicate that it was not responsible for an accident, the agency may furnish the data to GSA requesting that costs charged to and collected from it be credited to the agency. GSA will make the final determination of agency responsibility based upon Government findings, police accident reports, and any available witness statements.

(e) When contractors or subcontractors of using agencies are in accidents involving GSA IFMS vehicles, the agency employing the contractor will usually be billed directly for all costs associated with the accident. It will be the responsibility of the using agency to collect accident costs from the contractor should the contractor be at fault.

34. Subpart 101–39.49 is revised to read as follows:

Subpart 101–39.49—Forms

§ 101–39.4900 Scope of subpart.

This subpart provides the means for obtaining forms prescribed or available for use in connection with subject matter covered in part 101–39.

§ 101–39.4901 Obtaining standard and optional forms.

Standard and optional forms referenced in Part 101–39 may be obtained through the General Services Administration, Inventory and Requisition Management Branch, Attn: FCNI, Washington, DC 20406, or through regional GSA Federal Supply Service Bureaus. GSA regional offices will provide support to requesting activities needing forms.

Dated: July 16, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–28035 Filed 11–25–91; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 247]

Organization and Delegation of Powers and Duties; Delegation of Authority to the Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends 49 CFR 1.66 with respect to delegation of authority from the Secretary of Transportation (Secretary). It delegates to the Maritime Administrator authority conferred by 46 App. U.S.C. 836 relating to prosecution of forfeitures incurred under the provisions of the Shipping Act, 1916. The rule also amends the existing citations to title 46, United States Code, contained in 49 CFR 1.66 and 1.67. This amendment reflects a partial revision and enactment into positive law of title 46 that resulted in the unrevised portion being redesignated as title 46 App. U.S.C.

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Somerville, Vessel Transfer and Disposal Officer, Maritime Administration, room 7324, 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–5821; or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, room 10424, Department of Transportation, 400 Seventh Street, SW., room 10424, Washington, DC 20590, telephone: (202) 366–9307.

SUPPLEMENTARY INFORMATION: Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) requires the approval of the Secretary for the sale, mortgage, lease, charter, delivery or transfer in any manner to a noncitizen of any interest in or control of a vessel documented under United States law, or for any agreement to do so, or the transfer of a documented vessel, or a vessel last documented under laws of the United States, to foreign registry. It provides that a documented vessel may be seized by and forfeited to the United States Government if the vessel is in violation of this provision of law. The Secretary

has delegated this authority to the Maritime Administrator at 49 CFR 1.66(a). Section 38 of the 1916 Act (46 App. U.S.C. 836), as amended on December 12, 1989, by Public Law 101–225, provides that all forfeitures incurred under the 1916 Act may be prosecuted in the same court and may be disposed of in the same manner as forfeitures for offenses relating to the collection of duties, except that forfeitures may be remitted without seizure of the vessel. The Maritime Administration, in carrying out the forfeiture authority delegated to the Maritime Administrator by the Secretary, may from time to time find good cause to exercise the discretion to remit the forfeiture without seizure of the vessel. Specific delegation by the Secretary to the Maritime Administrator of the procedural authority provided by 46 App. U.S.C. 836 will clarify the authority of the Maritime Administration to remit forfeitures of vessels. The Secretary is hereby amending regulations of the Office of the Secretary of Transportation, at 49 CFR 1.66, to delegate to the Maritime Administrator that authority. Title 46, United States Code, has been partially revised and enacted into positive law by Public Law 98–89, 97 Stat. 500; Public Law 99–509, 100 Stat. 1913, and Public Law 100–710, 102 Stat. 4735. Since Congress has only partially revised title 46, the unrevised portion of title 46 has been redesignated as title 46 appendix. Accordingly, the citations of authority to 46 U.S.C. at 49 CFR 1.66 and 1.67 are being redesignated as 46 App. U.S.C. Corresponding changes are being made to the Department's Organization Manual. Since this amendment relates to Departmental organization, notice and comment are unnecessary, and the rule may become effective in fewer than thirty days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

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

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 322.

2. Section 1.66 is amended by revising paragraph (a) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(a) Carry out sections 9, 12, 14a, 21a, 37, 38, 40, 41, and 42 of the Shipping Act, 1916, as amended (46 App. U.S.C. 801 *et seq.*);

* * * * *

§§ 1.66 and 1.67 [Amended]

3. Sections 1.66 and 1.67 are amended by removing the citation "46 U.S.C." wherever it appears, and adding in its place "46 App. U.S.C.".

Issued on: November 7, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91–27987 Filed 11–25–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Railroad Administration

49 CFR Part 245

[FRA Docket No. RSUF–1, Notice No. 5]

RIN 2130–AA62

Railroad User Fees; Open Meeting

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice of open meeting.

SUMMARY: On September 30, 1991, the Federal Railroad Administration (FRA) published an interim final rule establishing the railroad user fee program which is applicable to the collection of user fees for fiscal year 1991. FRA indicated in the interim final rule its intention to reopen the user fee proceeding early in fiscal year 1992 to consider other user fee allocation criteria. As a first step in this process, FRA held an informal open meeting on November 8, 1991, in Washington, DC. The meeting was attended by interested railroad industry representatives and involved a discussion of key considerations in identifying criteria that might fairly allocate railroad user fees across the industry and some alternative assessment criteria that might be employed for fiscal years 1992 through 1995. To further this process, FRA intends to hold a second meeting on Friday, December 6, 1991. This second meeting will again be open to any interested persons who wish to attend as either participants or observers.

DATES: The second open meeting will be held on Friday, December 6, 1991 at 9 a.m.

ADDRESSES: The open meeting will be held in Room 6200, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy, (RRP–12), FRA, Washington, DC 20590 (Telephone: 202 366–0384); or William R. Fashouer, Deputy Assistant Chief Counsel, Office of Chief Counsel, (RCC–10), FRA, Washington, DC 20590 (Telephone: 202–366–0616).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1991, FRA published an interim final rule establishing the railroad user fee program mandated by section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*) as enacted in section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388–399). FRA's interim final rule bases the collection of railroad user fees for fiscal year 1991 on two criteria: train miles and road miles. As noted in FRA's Notice of Proposed Rulemaking ("NPRM") (45 FR 21216 (May 7, 1991)), FRA selected these criteria because they equitably allocated user fees across the railroad industry, they represented data the industry was already maintaining and therefore imposed only a limited additional reporting burden on the industry, they represented data that FRA could verify, and they allowed FRA to complete the interim rulemaking process in fiscal year 1991. A number of entities commenting on the NPRM noted that the fiscal year 1991 rulemaking schedule did not afford them sufficient time to evaluate and propose alternative criteria. These groups and individuals requested FRA to reopen the proceeding early in fiscal year 1992 in order to examine other factors upon which to allocate the user fees for fiscal years 1992 through 1995. FRA agreed to consider whether there might be alternative criteria that would improve on the criteria employed for fiscal year 1991.

The First Open Meeting

On Friday, November 8, 1991, FRA held an open meeting to hear suggestions from the railroad industry and the public on the options and criteria for the assessment of railroad user fees for fiscal years 1992 through 1995. The meeting was announced in the **Federal Register** on October 21, 1991 (56 FR 52498). Participating in the open meeting were representatives of the major railroad industry associations (the Association of American Railroads, the American Short Line Railroad

Association and the Regional Railroad Association) and a number of individual railroads. The meeting involved a frank discussion of considerations that are relevant to selecting user fee allocation criteria that fairly distribute the burden across the railroad industry as well as some possible criteria that might be selected.

The participants at the meeting requested more time to submit recommendations and requested FRA to provide certain information relating to the fiscal year 1991 assessments and FRA's allocation of safety resources. FRA agreed to provide such data. The data includes: a description of FRA's National Inspection Plan, information regarding the scaling factor, listing of individual carriers by fees assessed, train-miles, road-miles, and employee hours and other relevant information. This information has been made available to all attendees at the meeting, including the industry associations. Anyone interested in receiving the information should contact one of the industry associations or the FRA through either of the individuals identified above.

FRA was pleased with the extent of industry participation in the meeting and the willingness of attendees to provide detailed recommendations for user fee criteria and allocation formulas that would provide both fair and timely assessments. The range of ideas and options offered were varied and interesting and served to demonstrate the complexity of the issue. In order to help focus the issues for a productive second session, we have sought to highlight some ideas and concerns that were expressed at the meeting.

Data Availability and Collection

In developing the user fee program, FRA was hindered by the absence of a broad data base covering the entire railroad industry. FRA's Office of Safety presently collects data on train miles, road miles, and man hours worked. While other indices have been suggested including car miles, carloads per mile, gross ton miles, revenue ton miles, and number of freight cars, none are currently available except from class I carriers. The practicality of introducing a measure not currently collected adds another dimension to the problem and adds a new reporting burden to the industry's non-class I carriers. In addition, since user fees are to be collected for fiscal year 1992 before the end of the fiscal year, new data must be collected well in advance of that date in order to be useful. Participants supporting allocation formulas that involve the collection of new data should address both the practical issues associated with completing the process in a timely basis as well as an analysis showing why the suggested alternative is fairer than employing train miles and road miles (especially considering the additional reporting burden).

Alternative Allocation Bases and Formulas

Several participants at the meeting suggested man hours as an activity based measure that might be an appropriate user fee assessment criterion, most likely in some combination with train miles or road miles. FRA would be interested in receiving further comment on the advisability of including man hours in some fashion for the fiscal year 1992 through 1995 assessments.

Some participants raised the concept of developing some type of risk index or safety performance measure of railroads that might be applied to the final bill as an adjustment factor. Railroad user fees would then be an incentive for improved railroad safety. FRA found this to be an interesting concept and is interested in receiving additional comments on this approach. A key consideration is to avoid making the formula unduly complex and unwieldy. Some participants also suggested that the fees should be based on the amount of safety inspection each railroad or class of railroads receives. FRA believes there are a number of problems associated with this approach but is interested in receiving industry suggestions on how it might work.

Some participants also suggested breaking the industry down into identifiable segments, by class or type of operations for example and employing different allocation criteria for each segment. This has the advantage of allowing certain criteria that are good measures of railroad activity for certain segments of the industry to be employed in determining the appropriate user fee for railroads in that segment. However, developing a rational basis for assigning a certain portion of the total fee to each industry segment presents a greater challenge. Again, FRA is interested in receiving detailed analysis of how an approach of this type might work.

The Second Open Meeting

Participants are requested to come to the second open meeting prepared to describe and support alternative bases upon which FRA would collect the user fees mandated by Congress. Persons or groups desiring to actively participate are encouraged to notify either of the individuals identified above in advance of the meeting. In addition, in the interest of facilitating the exchange of information, participants are requested to bring written descriptions of their proposals for distribution to other participants. Written submissions are also welcome from individuals or groups that cannot attend the meeting. In order to be useful, comments and suggestions should be provided on or before December 6, 1991. FRA has to move expeditiously forward with the rulemaking after that date in order to complete the process by early summer.

Issued in Washington, DC on November 20, 1991.

Perry A. Rivkind,

Deputy Federal Railroad Administrator.

[FR Doc. 91-28363 Filed 11-25-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 910641-1261]

Western Pacific Precious Corals

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

ACTION: Final rule; permits.

SUMMARY: NMFS issues a final rule to implement a regulatory amendment under the Fishery Management Plan for the Precious Coral Fishery of the Western Pacific Region (FMP). This rule would make the precious coral fishery permit process and requirements consistent with the permit process and requirements of other fisheries in the western Pacific, namely, crustacean, bottomfish, and pelagic longline fisheries.

EFFECTIVE DATE: December 26, 1991.

ADDRESSES: Send comments on the collection of information to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0204, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213-514-6660), or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808-955-8831).

SUPPLEMENTARY INFORMATION: The FMP, which was approved by the Secretary of Commerce on May 20, 1980,

established a permit program for persons intending to fish for precious corals in the exclusive economic zone (EEZ) of the western Pacific. Harvesting of precious corals requires an annual area-specific permit to which appropriate conditions may be attached. An applicant obtains a permit by completing and submitting a permit application to the Southwest Region, NMFS. The regulations also specify requirements for reporting changes in application information, and govern issuance, expiration, renewal, alteration, replacement, transfer, and display of permits.

As part of an effort to improve the Southwest Region Federal Fisheries Permits program, NMFS is consolidating into one form the different application forms previously used for fishing permits for the western Pacific. The consolidation of forms allows an applicant for a precious coral fishing permit to use the same application form and provide the same information regarding the vessel owner, vessel operator, and vessel characteristics as a person who applies for a crustacean, bottomfish, and/or pelagic longline permit. Likewise, permit requirements governing changes in application information, issuance, expiration, renewal, and alteration of a precious coral fishing permit are made consistent with all Southwest Region Federal fishing permits. The proposed rule was published July 8, 1991 (56 FR 30893). No comments on the proposed rule were received from the public.

The intent of this action is to simplify the process by which precious coral fishing permits are initially obtained and subsequently renewed by participants in the fishery, to facilitate understanding of the permit requirements, and to reduce the administrative burden of processing fishing permit applications.

Classification

This final rule is published under the authority of section 305 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that the rule is necessary for the conservation and management of precious coral resources in the western Pacific and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that this final rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by NOAA Directive 02–10, because it would not result in any significant change from the status quo, it is an administrative action that is ongoing or recurring with limited potential for effect on the human environment, and it falls within the scope of the Environmental Impact Statement prepared for the FMP.

The Assistant Administrator has also determined that it is not a major rule requiring a regulatory impact analysis under Executive Order (E.O.) 12291. This action will not have a cumulative effect on the economy of $100 million or more, nor will it result in major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.*, because it does not create any additional burdens. As a result, a regulatory flexibility analysis was not prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the permit system, information requested from precious coral fishing permit applicants would be standardized as part of an effort by NMFS to consolidate into one form the different application forms now being used for fishing permits in the western Pacific. An applicant for a precious coral fishing permit would use the same application form and provide the same information concerning the vessel owner, vessel operator, and vessel as a person who applies for a crustacean, bottomfish, and/or pelagic longline fishing permit. The public reporting burden for this collection of information is estimated to average 15 minutes per application. This information collection has been approved by the Office of Management and Budget (OMB Control No. 0648–0204).

Send comments on reducing the burden estimate or any other aspect of this collection of information, including suggestions on how to reduce the burden, to the Regional Director, Southwest Region, NMFS, and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of American Samoa, Guam, and Hawaii. This determination was submitted for review to the responsible state and territorial agencies under section 307 of the Coastal Zone Management Act. The governments of Hawaii, Guam, and American Samoa have concurred with this determination.

This rule is not an action that will affect any species listed as endangered or threatened under the Endangered Species Act or any species protected by the Marine Mammal Protection Act.

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

List of Subjects in 50 CFR Part 680

Fisheries, Fishing, Reporting and Recordkeeping requirements.

Dated: November 19, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For reasons stated in the preamble, 50 CFR part 680 is amended as follows:

PART 680—WESTERN PACIFIC PRECIOUS CORALS

1. The authority citation for part 680 continues to read as follows:

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

2. In § 680.2 the following definition is added, in alphabetical order, to read as follows:

§ 680.2 Definitions.

* * * * *

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396.

* * * * *

3. In § 680.4, paragraphs (b) and (d) through (h) are revised to read as follows:

§ 680.4 Permits.

* * * * *

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Pacific Area Office by the vessel owner, or a designee of the owner, at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on a form that is obtained from the Pacific Area Office and contains at least the following information:

(i) Type of application; whether the application is for a new permit or a renewal; and what permit area it is for;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Official number of the vessel;

(viii) Radio call sign of the vessel;

(ix) Principal port of the vessel;

(x) Length of the vessel;

(xi) Engine horsepower;

(xii) Approximate fish hold capacity;

(xiii) Number of crew;

(xiv) Construction date;

(xv) Date vessel purchased;

(xvi) Purchase price;

(xvii) Type and amount of fishing gear carried on board the vessel;

(xviii) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xix) Signature of the applicant; and

(xx) Date of signature.

* * * * *

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire at 2400 hours local time on December 31 following the effective date of the permit.

(g) *Renewal.* An application for a renewal of a permit must be submitted to the Pacific Area Office in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

* * * * *

[FR Doc. 91-28335 Filed 11-25-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 685

[Docket No. 910645-1259]

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Emergency interim rule; modification of the longline area closures in the Main Hawaiian Islands.

SUMMARY: The Secretary of Commerce (Secretary) modifies an emergency rule now in effect that closes to longline fishing the portion of the exclusive economic zone (EEZ) within 75 nautical miles (nm) of the Counties of Kauai and Honolulu, and within 50 nm of the Counties of Maui and Hawaii. This action will permit persons with a long history of participation in and dependence on the longline fishery in nearshore waters to continue operations in those waters that are otherwise closed to longline fishing. The Director, Southwest Region, NMFS (Regional Director), will have authority to revoke exemptions if he finds that they are resulting in gear conflicts that would be likely to continue in the absence of action.

EFFECTIVE DATE: This rule is effective from November 21, 1991, until 2400 hours local time December 16, 1991.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained from E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Send comments on the collection of information to the Director, Southwest Region, NMFS (see above), and to the Office of Information and Regulatory Affairs, Attention Paperwork Reduction Project 0648-0214, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523-1368, or Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary of Commerce issued an emergency rule (56 FR 28116, June 19, 1991, corrected by a notice published on July 11, 1991, at 56 FR 31689) temporarily amending the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) and its implementing regulations. The emergency closure was subsequently extended for a second 90-day period by a notice published in the Federal Register on September 20, 1991 (56 FR 47701). The closure, which became effective at 0000 hours local time June 14, 1991, and will terminate at 2400 hours local time December 16, 1991, prohibits fishing for pelagic species with longline gear within 75 nm of Kauai County (which includes the islands of Kauai, Niihau, and Kaula) and Honolulu County (which is the island of Oahu), and within 50 nm around Maui County (which includes the islands of Maui, Kahoolawe, Lanai, and Molokai) and Hawaii County (which is the island of Hawaii). The closures are intended to prevent conflicts between longline gear and troll and handline gear by precluding longline fishing in areas on which troll and handline fisheries have been dependent. Additional information on the basis for this action may be found in the Federal Register of June 19, 1991.

At its meeting August 22, 1991, when the Council agreed that the emergency rule should be extended for a second 90-day period, the Council also heard testimony from several fishermen who had a long history of longline fishing in the areas closed under the emergency rule, and who were suffering financial hardship as a result of the closures. The Council concluded that while it was necessary to maintain the restriction of longline fishing in the waters near the Main Hawaiian Islands, it also is necessary to allow persons with a long history of participation in and dependence on the longline fishery in these closed areas to continue fishing in these areas. The Council therefore proposed that the extension of the area closure rule include criteria to identify persons who would qualify for exemption from the area closures. The Council requested that the above modification be made effective as soon as possible to prevent further financial hardship for such persons. The Council also concluded that the Regional Director should have the authority to cancel the exemptions if he finds that they are resulting in gear conflicts that would likely continue if no action were taken. This action implements the modification of the rule providing for exemptions from the longline area closure.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is necessary to respond to an emergency situation involving

unintended hardship to certain vessels as explained above, and is consistent with the Magnuson Act and other applicable law. This rule modifies a rule that was originally implemented for 90 days under section 305(c)(2)(B) of the Magnuson Act and subsequently extended for an additional 90 days (September 20, 1991, 56 FR 47701).

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment under section 553(b) of the Administrative Procedure Act (APA). The effectiveness of this rule will not be delayed for 30 days because the rule grants or recognizes an exemption or relieves a restriction under section 553(d)(1) of the APA.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order and has been reported to the Director of the Office of Management and Budget (OMB) with an explanation of why it is not possible to follow the regular procedures of that order.

NOAA prepared an environmental assessment (EA) for the original emergency rule. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Southwest Region (see **"ADDRESSES"**).

The Assistant Administrator has determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii, and the state has concurred.

This rule contains a collection-of-information requirement that is subject to the Paperwork Reduction Act. The estimated information collection burden is 4 hours per exemption application to compile the necessary information and submit it to NMFS. Send comments on the reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Regional Director and to OMB (see **"ADDRESSES"**).

The emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

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

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and Recordkeeping requirements.

Dated: November 19, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.5, effective November 21, 1991, paragraph (u), which remains effective until 2400 hours local time December 16, 1991, is revised to read as follows:

§ 685.5 Prohibitions.

* * * * *

(u) Fish with longline gear within the longline fishing prohibited area in the Main Hawaiian Islands as defined in § 685.2, except as allowed pursuant to an exemption issued under § 685.18.

3. A new § 685.18 is added to read, effective from November 21, 1991, until 2400 hours local time December 16, 1991, to read as follows:

§ 685.18 Exemptions for longline fishing prohibited area.

(a) An exemption permitting a person to use longline gear to fish in the longline fishing prohibited area around specific island(s) will be issued to a person who can document that he or she:

(1) Currently holds a limited entry permit under § 685.15;

(2) Before 1970, was the owner or operator of a vessel when that vessel landed management unit species taken on longline gear in an area that is now within the longline fishing prohibited area;

(3) In at least 5 calendar years since 1969, was the owner or operator of a vessel that landed management unit species taken on longline gear in an area that is now within the longline fishing prohibited area; and

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught management unit species in an area that is now in the longline fishing prohibited area.

(b) Each exemption shall specify the island(s) around which the exemption holder made the harvests documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption from the longline area closure must submit an application and supporting documentation to the Pacific Area Office at least 15 days before the desired effective date of the exemption.

(e) If the Regional Director determines that a gear conflict has occurred and is likely to occur again in the longline fishing prohibited area between a vessel holding an exemption under this section and a non-longline vessel, he may prohibit all longline fishing in the longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

[FR Doc. 91-28334 Filed 11-21-91; 10:18 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 228
Tuesday, November 26, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150-AD 94

Environmental Review for Operating Licenses; Proposed Rule: extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: On September 17, 1991, a proposed amendment to 10 CFR part 51 was published in the **Federal Register** (56 FR 47016) that indicated that comments must be received on or before December 16, 1991. Since several interested persons have indicated that additional time would be needed because of the length of the supporting documents, the NRC is issuing this notice extending the comment period.

DATES: New comment period expires March 16, 1992. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to Docketing and Service Branch, One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:30 am and 4:15 pm. Examine comments received at: The NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald Cleary, Division of Safety Issues Resolution, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3936.

Dated at Rockville, Maryland, this 20th day of November, 1991.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 91-28379 Filed 11-25-91; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 91-582]

Dividends Paid on Federal Home Loan Bank Stock

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to amend part 932 of its regulations governing the payment of dividends to holders of Federal Home Loan Bank ("FHLBank") stock in order to ensure fair and equitable treatment for all Federal Home Loan Bank System ("FHLBank System") members.

In order to provide for the equitable treatment of all FHLBank members, the Finance Board proposes to amend § 932.3 compensate members that redeem stock in the FHLBank System prior to the declaration of a dividend for the FHLBanks' use of their funds prior to the redemption.

DATES: Comments must be in writing and received on or before December 26, 1991.

ADDRESSES: Send comments to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Thomas D. Sheehan, (202) 408-2870, Assistant Director, District Banks Directorate, or Jon E. Boustany, (202) 408-2932, Attorney-Advisor, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background

In order to become a member of the FHLBank System, an institution is required to subscribe for stock in the FHLBank district in which it is located. See 12 U.S.C. 1422, 1424, and 1426. Once a member has subscribed for stock in the FHLBank System, it is entitled to receive dividends on such stock without preference. See *id.* at 1426(g). Pursuant to 12 U.S.C. 1426(g), the Finance Board promulgated a regulation at 12 CFR 932.3 governing the issuance of dividends.

Specifically, § 932.3 of the Finance Board's regulations provides that "the board of directors of each Bank may, with the approval of the [Finance] Board, declare a dividend from net earnings, the dividend stabilization reserve, and undivided profits to stockholders of record * * * on the paid-in value of capital stock outstanding on the record date." See 12 CFR 932.3. However, dividends on such stock are computed "only for the period such stock was outstanding during the interval between the record date and the immediately preceding record date." *Id.*

B. Analysis of Proposed Rulemaking

Historically, FHLBank System membership and the members' capital stockholdings had been relatively stable. Recently, however, changes in the membership base, particularly due to the thrift resolution process, have led to greater volatility in System capital stock outstanding. As a result, the Finance Board has determined that § 932.3 may no longer provide for equitable treatment in the distribution of dividends to all FHLBank stockholders, since an institution that for whatever reason redeems its stock in the FHLBank System prior to the record date, is denied any dividend for the FHLBank's use of its funds prior to redemption of such stock. Thus, the Finance Board proposes to amend § 932.3 in order to eliminate such inequities in the distribution of dividends to FHLBank stockholders.

Specifically, the proposed rule would eliminate the concept of a record date, and would authorize the payment of declared dividends without preference to stockholders on any stock held during the dividend period. Under the proposal, the dividend period may be quarterly, semiannually, or annually ending on March 31, June 30, September 30, or December 31. Thus, a stockholder that held stock at any time during the dividend period would receive its *pro rata* share of the distribution without preference based on the period such stock was outstanding during the dividend period. Under this approach, a

stockholder that redeems its stock at any time during the dividend period would be compensated at the end of the dividend period for the FHLBank's use of its funds prior to the stock redemption.

Section 932.3 provides for the payment of dividends from net earnings, the dividend stabilization reserve and undivided profits. The FHLBanks' retained earnings are comprised of the legal reserve, the dividend stabilization reserve and undivided profits. Since the FHLBanks are prohibited from paying dividends from the legal reserve in section 16 of the Bank Act, § 932.3 could not generally provide for the payment of dividends from retained earnings. Rather, it specifically listed the two components of retained earnings from which there could be payment of dividends, namely the dividend stabilization reserve and undivided profits.

Effective January 1, 1992, however, section 724 of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA") amends the Bank Act by eliminating the legal reserve in section 16 of the Bank Act. Public Law No. 101–73, title VII, sec. 701(b)(1), 103 Stat. 412 (August 9, 1989). Thus, retained earnings shall only include the dividend stabilization reserve and undivided profits. The proposed rule, therefore, would amend § 932.3 by substituting in the place of the terms "dividend stabilization reserve" and "undivided profits," the term "previously retained earnings." The terminology change will have no effect on the payment of dividends, since retained earnings will be comprised exclusively of the dividend stabilization reserve and undivided profits.

C. Solicitation of Comments

The Finance Board solicits comment on all aspects of this proposed regulation. Specifically, the Finance Board invites comments on alternative ways to ensure the equitable treatment of all members in the distribution of dividends. The Finance Board is providing for a 30-day comment period.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b) *et seq.*), it is certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 12 CFR Part 932

Conflict of interests, Federal home loan banks.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, subchapter B, part 932 of the Code of Federal Regulations as follows:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 continues to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101, *et seq.*).

2. Section 932.3 is revised to read as follows:

§ 932.3 Dividends.

The board of directors of each Bank may, with the approval of the Board, declare and pay a dividend from net earnings, including previously retained earnings, on the paid-in value of capital stock held during the dividend period. The dividend period may be quarterly, semiannually, or annually ending on March 31, June 30, September 30, or December 31. Dividends on such stock shall be computed without preference and only for the period such stock was outstanding during the dividend period. Dividends may be paid in cash or in the form of stock.

Dated: November 22, 1991.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91–28514 Filed 11–25–91; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee

12 CFR Part 1102

[Docket No. AS91–4]

Rules of Practice for Temporary Waiver Proceedings

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Proposed rulemaking.

SUMMARY: The Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council ("FFIEC") is publishing for comment proposed part 1102, which would set out the ASC's procedures relating to proceedings granting and terminating temporary waivers under section 1119(b) [1] of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").[2] Congress intended title XI of FIRREA and the ASC, the FFIRAs and the Resolution Trust Corporation to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser.

DATES: Comments must be received on or before December 26, 1991.

ADDRESSES: Persons wishing to submit written comments should file them with Edwin W. Baker, Executive Director, Appraisal Subcommittee, 1776 G Street, NW., suite 850B, Washington, DC 20006. All comment letters should refer to Docket No. AS91–4. All comments received will be available for public inspection and copying at the above location.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 357–0133, Appraisal Subcommittee, 1776 G Street, NW., Suite 850B, Washington, DC 20006.

SUPPLEMENTAL INFORMATION:

I. Introduction

On August 9, 1989, Congress adopted FIRREA, including sections 1102 [3] of title XI, which established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of the Federal Financial Institutions Regulatory Agencies ("FFIRA") [4] and the Department of Housing and Urban Development. Congress intended title XI of FIRREA and the ASC, the FFIRAs and the Resolution Trust Corporation ("RTC") to protect federal financial and public policy interests [5] in real estate-related

---

[1] 12 U.S.C. 3348(b) (1990).

[2] Public Law 101–73, 103 Stat. 183 (1989).

[3] 12 U.S.C. 3310 (1990).

[4] The FFIRAs are "the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration." section 1122(6) of title XI, 12 U.S.C. 3350(6) (1990).

[5] Title XI's general purpose is "to provide that Federal financial and public policy interests . . . will be protected by requiring that [certain] real estate appraisals are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." section 1101 of title XI, 12 U.S.C. 3331 (1990).

financial transactions [6] requiring the services of an appraiser.[7]

The ASC has several statutory duties under title XI. First, it must monitor the appraisal regulations adopted by the FFIRAs and the RTC (collectively, "Agencies"). Those regulations set out appraisal standards for federally related transactions [8] and define those federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the ASC must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the ASC must monitor each State's certification and licensing programs for real estate appraisers [9] and must review each State's compliance with the requirements of title XI. It also is authorized by title XI to take action against non-complying States.[10]

II. Statutory Authority

After December 31, 1991, all financial institutions must use State licensed or certified appraisers, as appropriate, in federally related transactions.[11] Thus, each State ideally should have in place at that time its entire regulatory scheme for certifying, licensing and supervising appraisers.

Section 1119(b) of title XI, however, provides the ASC and the States with a degree of flexibility in dealing with extraordinary circumstances that may occur at any time after December 31st. This section enables the ASC to waive, on a temporary basis and with the FFIEC's approval, any State certification or licensing requirement on a written finding that: (1) "There is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally related transactions"; and (2) that the scarcity is "leading to inordinate delays in the performance of such appraisals." [12] Either a State in compliance with title XI or the ASC can make a written "scarcity/delay" finding. A State, however, cannot grant or deny a waiver under section 1119(b); that authority belongs only to the ASC. Congress intended that the ASC exercise this waiver authority "cautiously." [13] Temporary waivers terminate when the ASC "determines that such inordinate delays have been eliminated."

While the Section speaks clearly to the ASC and the States, it does not explicitly limit the universe of persons who may either request that the ASC provide temporary waiver relief or provide information to the ASC that could lead to the ASC granting temporary waiver relief on its own initiative. Therefore, the ASC encourages the Agencies, their respective regulated financial institutions, and other persons or institutions to submit to the ASC critical information respecting appraiser scarcities and delays occurring in the States.[14] In connection with those informational submissions, they also may request that the ASC exercise its discretionary authority to provide temporary waiver relief. The ASC will consider such submissions and requests in determining whether it should initiate a temporary waiver proceeding.

III. Description of the Proposed Rule

Proposed rule 1102 provides a specific procedure for handling section 1119(b) waiver proceedings. The ASC tailored the proposal to afford expeditious administrative processing of these proceedings, while, at the same time, providing interested parties with an opportunity to participate meaningfully in the process. The ASC intends to work closely with the States to assure that temporary waivers will provide sufficient relief. In return, the ASC expects requests for waiver relief to be designed as narrowly as possible.

Proposed rule 1102 sets out a highly streamlined procedure for processing temporary waivers. Upon the ASC's proper receipt of a request [15] or when the ASC on its own initiative determines to commence a temporary waiver proceeding, the ASC must publish promptly in the **Federal Register** a notice containing a concise general statement of the nature and the basis for the waiver. The notice must request written comments from interested members of the public for a 30 calendar-day period. The ASC has at most 45 calendar days from the notice's publication within which to issue an order either granting or denying a waiver. The ASC can grant or deny a waiver in whole, in part, and upon specified terms and conditions, including provisions for the termination of the order.[16] The ASC must discuss in the order the reasons for its finding and note that the ASC will be preparing appropriate notifications regarding the terms and conditions of the temporary waiver order to the Agencies for dissemination to their respective regulated lending institutions should the order become effective. An ASC temporary waiver relief order will not become effective until the FFIEC concurs with the ASC's action. The order then would be published promptly in the **Federal Register.**[17]

Proposed rule 1102.2 is central to the waiver procedure. It describes the specific information needed by the ASC for granting or denying a temporary waiver request. A request must set out fully and accurately:

(1) The requirement or requirements from which relief is being sought;

(2) A description of all significant problems currently being encountered in efforts to comply with title XI;

(3) The nature of the scarcity of certified or licensed appraisers;

(4) The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers;

(5) The reasons why the requester believes that the requirement or requirements are causing the scarcity of

---

[6] See section 1121(5) of title XI, 12 U.S.C. 3350(5) (1990) for the definition of "real estate-related financial transaction."

[7] The FFIRAs and the RTC have adopted appraisal regulations that, among other things, clarify the phrase "requires the services of an appraiser." See, e.g., the appraisal regulations of the FDIC at 12 CFR 323.3(a) (1991).

[8] See section 1121(4) of title XI, 12 U.S.C. 3350(4) (1990), which defines a "federally related transaction."

[9] The ASC is required to "monitor State appraiser certifying and licensing agencies for the purpose of determining whether the * * * agency's policies, practices, and procedures are consistent with [title XI]. section 1118(a) of title XI, 12 U.S.C. 3347(a) (1990). See, also, section 1103(a)(1) of title XI, 12 U.S.C. 3332(a)(1) (1990). Each State with an appraiser certifying and licensing agency is responsible for transmitting to the Subcommittee a roster of these individuals, along with an annual registry fee. The Subcommittee must maintain a national registry of all state certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.

[10] See section 1118 of title XI, 12 U.S.C. 3347 (1990).

[11] See section 1119(a) of title XI, 12 U.S.C. 3348(a), and 56 FR 20002 (May 1, 1991) and 29653 (June 28, 1991)

[12] A scarcity leading to an inordinate service delay can occur in a specific geographical area or areas and in a service segment. For example, Black, White and Green Counties and Large City in State "A" are experiencing a scarcity of State certified appraisers leading to inordinate delays in obtaining appraisals of residential properties of over $1 million.

[13] House Comm. on Banking, Finance and Urban Affairs, Report Together With Additional Supplemental, Minority, Individual, and Dissenting Views, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, H.R. Rep. No. 101–54 Part 1, 101st Cong., 1st Sess., at 482–83.

[14] They are encouraged to participate in the temporary waiver process by filing comments with the ASC respecting proposed temporary waiver actions.

[15] The ASC will not consider a request from a State received unless it contains certain information. See the following paragraph and proposed rule 1102.2.

[16] For example, the waiver order may include language automatically terminating its effectiveness as of the earlier of a specific date or upon the State's certification that the pertinent scarcities and inordinate delays have been eliminated.

[17] Section 1119(b) of title XI, 12 U.S.C. 3348(b) (1990), requires FFIEC approval of any ASC decision to issue a waiver.

certified or licensed appraisers and the inordinate delays in obtaining needed appraiser services; and

(6) A specific plan for expeditiously alleviating the scarcity and the service delays.

A requester must provide this information fully and accurately. If a requester fails to do so, the ASC will not consider the request "received" for processing,[18] and the proposal's deadlines for action will not be triggered. Other persons requesting relief or providing information to the ASC respecting scarcities and inordinate service delays under proposed rule 1102.3 also should address these items in their documents. While ASC acceptance of informational submissions from other persons cannot be "received" and will not trigger the proposal's deadlines for action, the ASC must consider them in determining whether to initiate a temporary waiver proceeding.[19]

Proposed rule 1102 also enables the ASC to terminate a waiver whenever the ASC finds that: (1) The "inordinate delays" in obtaining the services of a State licensed or certified appraiser no longer exist; or (2) the terms and conditions of the waiver order are not being satisfied. The ASC must publish a finding of waiver termination promptly in the **Federal Register** and request public comment on that finding for a 30-day period. Absent further ASC action to the contrary, the finding will become final ten days after the close of the comment period. During this ten-day period, the ASC will prepare appropriate notifications regarding the terms and conditions of the temporary waiver finding to the Agencies for dissemination to their respective regulated lending institutions. The ASC will notify the FFIEC about a proposed waiver termination.

IV. Interim Temporary Waiver Procedures

The ASC has reason to believe that, notwithstanding good faith efforts to comply fully with title XI by the Title's January 1, 1992 full implementation date, one or more States in all likelihood will be requesting temporary waiver relief between now and the final adoption of proposed rule 1102. During this interim period, the ASC will accept and consider requests for temporary waiver relief. Moreover, the ASC will accept informational submissions respecting the availability of State licensed or certified appraisers in the States. To facilitate this process, the ASC asks requesters and submitters to use the criteria in proposed rule 1102.2 as a guideline in formulating their documents. This should greatly assist (1) requesters in drafting well focused waiver requests during this critical transitional period and (2) the ASC in determining whether to initiate temporary waiver proceedings.

During this period, the ASC will retain its procedural flexibility under section 1119(b) in responding to written temporary waiver requests and will not be bound formally by the proposed rule's time frames and other procedural requirements. That is, until the ASC finally adopts rule 1102, the ASC only must comply with section 1119(b)'s provisions, *i.e.*, determining whether the appropriate statutory tests for relief have been met, issuing a written finding and obtaining FFIEC concurrence. Nothing in title XI, and in particular section 1119(b) or any other provision of federal law, specifically requires the ASC to propose and adopt written procedures governing the process for granting or denying temporary waivers. The ASC, however, believes that putting in place formal temporary waiver procedures makes good regulatory sense. Such procedures should: (1) Ensure the uniform procedural treatment of temporary waiver requests; (2) provide substantive guidance in formulating those requests; and (3) provide the expeditious and efficient resolution of requests.

V. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the ASC certifies that this notice of proposed rulemaking is not expected to have a significant adverse economic impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

Proposed rule 1102 would set out the ASC's procedures relating to proceedings granting and terminating temporary waivers under section 1119(b) of title XI. This section of FIRREA generally requires the ASC to make written findings and to determine that such findings satisfy the stated criteria for granting a waiver.

The purpose of the proposed rule is to secure a just and orderly determination of administrative proceedings. Temporary waiver proceedings by their very nature provide relief for small and large business entities and individuals.

VI. Executive Order 12291 Statement

The ASC has determined that this notice of proposed rulemaking does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this notice of proposed rulemaking, if adopted: (1) Would not have an annual effect on the economy of $100 million or more; (2) would not result in a major increase in the cost of financial institution operations or governmental supervision; and (3) would not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity or innovation, within the meaning of the Executive Order.

VII. List of Subjects in 12 CFR Part 1102

Appraisers, Proceedings; State Appraisal Regulatory Agencies; Waiver

VIII. Text of the Proposed Rule

Title 12 of the Code of Federal Regulations is amended as follows:

1. By adding new part 1102 to read as follows:

PART 1102—APPRAISAL REGULATION

Subpart A—Temporary waiver requests

Sec.

1102.1 Authority, purpose and scope.
1102.2 Requirements for requests.
1102.3 Other requests and information submissions.
1102.4 Notice and comment.
1102.5 Subcommittee determination.
1102.6 Waiver extension.
1102.7 Waiver termination.

Subpart B—[Reserved]

Authority: 12 U.S.C. 3348(b), unless otherwise noted.

Subpart A—Temporary Waiver Requests

§ 1102.1 Authority, purpose and scope.

(a) *Authority.* This subpart is issued under section 1119(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 3348(b)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under section 1119(b) of title XI of FIRREA (12 U.S.C. 3348(b)). These procedures apply to whenever a state appraiser regulatory agency requests the Subcommittee for a waiver of any requirement relating to certification or licensing of a person to perform appraisals under title XI of FIRREA. They also apply whenever the

[18] The ASC and its staff intends to work closely with requesters to provide all relevant information.

[19] Proposed rule 1102.6 enables State Appraiser Regulatory Agencies to request in writing an extension of an existing temporary waiver order. To ensure uniform processing and sufficient program discipline, an extension request will be processed exactly like a new temporary waiver request.

Subcommittee, based on sufficient, credible information or requests received from other persons or entities, initiates a temporary waiver proceeding.

§ 1102.2 Requirements for requests.

A request will not be deemed received by the Subcommittee unless it fully and accurately sets out:

(a) If the requester is a State Appraiser Regulatory Agency, a written, duly authorized determination by the State Appraiser Regulatory Agency that there is a scarcity of State licensed or State certified appraisers leading to inordinate delays in obtaining appraisals in federally related transactions. In the absence of such a written determination, a State Appraiser Regulatory Agency must ask the ASC for such a determination. A requester other than a State Appraiser Regulatory Agency may ask the ASC for such a determination;

(b) The requirement or requirements from which relief is being sought;

(c) A description of all significant problems currently being encountered in efforts to comply with title XI;

(d) The nature of the scarcity of certified or licensed appraisers (including supporting documentation);

(e) The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers (including supporting documentation);

(f) The reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays; and

(g) A specific plan for expeditiously alleviating the scarcity and the service delays.

§ 1102.3 Other requests and information submissions.

The Federal Financial Institutions Regulatory Agencies and the Resolution Trust Corporation, their respective regulated financial institutions, and other persons or institutions may submit the information requested in § 1102.2 and may ask that the Subcommittee exercise its discretionary authority to initiate a temporary waiver proceeding. The Subcommittee shall consider these submissions and requests in exercising that authority. When the Subcommittee initiates a temporary waiver proceeding, these documents shall correspond to a received request under § 1102.4 of this subpart.

§ 1102.4 Notice and comment.

The Subcommittee shall publish promptly in the **Federal Register** a notice respecting: (a) The received request; or (b) The Subcommittee order initiating a temporary waiver proceeding. The notice or initiation order shall contain a concise general statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views and arguments.

§ 1102.5 Subcommittee determination.

Within 45 calendar days of the date of the publication of the notice or initiation order in the **Federal Register**, the Subcommittee, by order, shall either grant or deny a waiver in whole, in part, and upon specified terms and conditions, including provisions for waiver termination. Such order shall respond to comments received from interested members of the public and shall provide the reasons for the Subcommittee's finding. The order shall be published promptly in the **Federal Register**, which, in the case of an approval order, shall be after Federal Financial Institution Examination Council concurrence. The Subcommittee's approval order shall be effective only upon Examination Council concurrence.

§ 1102.6 Waiver extension.

A State Appraiser Regulatory Agency may request an extension of temporary waiver relief by forwarding an additional written request to the Subcommittee. This additional request shall be subject to all the requirements of this subpart.

§ 1102.7 Waiver termination.

The Subcommittee at any time may terminate a waiver order on the finding that: (a) The inordinate delays in obtaining the services of certified or licensed appraisers no longer exist; or (b) The terms and conditions of the waiver order are not being satisfied.

The Subcommittee shall publish a finding of waiver termination promptly in the **Federal Register**, giving interested persons 30 calendar days from publication in which to submit written data, views and arguments. In the absence of further Subcommittee action to the contrary, the finding of waiver termination automatically shall become final ten calendar days after the close of the comment period.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, Dated: November 19, 1991.

Diana L. Garmus,

Acting Chairperson.

[FR Doc. 91-28208 Filed 11-25-91; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule; Correction

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the "Nonmanufacturer Rule" for four wheel utility trucks; correction and extension of comment period.

SUMMARY: SBA is correcting an error in the Product and Service Code (PSC) listing for four wheel drive utility trucks in its "Notice of intent to waive the Nonmanufacturer Rule for multiple products" which appeared in the Federal Register on October 29, 1991 (56 FR 55636). The correct PSC for four wheel utility trucks in column 3 is 2320. In addition, the comment period is extended until December 11, 1991.

DATES: The comment period deadline for four wheel utility trucks only is extended to December 11, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, (202) 205-7308.

Dated: November 15, 1991.

Gene VanArsdale,

Acting Chairman, Size Policy Board.

[FR Doc. 91-28131 Filed 11-25-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-31-AD]

Airworthiness Directives; Dassault Aviation Model Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to certain Avions Marcel Dassault-Breguet Aviation Model Mystere Falcon 900 series airplanes, which would have required repetitive inspections to detect clogged drains in the box structures surrounding the flight controls at frame 25; modifications of the crosssection of the outlet of the drain stub; and the installation of a protective screen on drains on each side of the center beam.

That action was prompted by reports of clogged drainage systems on in-service airplanes. This condition, if not corrected, could result in stiffness of the center engine power control and/or flight controls (elevator and rudder), and reduced controllability of the airplane. This action revises the proposed rule by requiring modification of the collector drains as terminating action for the repetitive inspections, and by expanding the AD's applicability to include additional airplanes.

DATES: Comments must be received no later than December 31, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-31-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-31-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No. 91-NM-31-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Avions Marcel Dassault-Breguet Aviation Model Mystere Falcon 900 series airplanes, was published in the **Federal Register** on March 21, 1991 (56 FR 11974). That proposal would have required repetitive inspections to detect clogged drains in the box structures surrounding the flight controls at frame 25; modifications of the cross-section of the outlet of the drain stub; and the installation of a protective screen on drains on each side of the center beam. That action was prompted by reports of clogged drainage systems on in-service airplanes. This condition, if not corrected, could result in stiffness of the center engine power control and/or flight controls (elevator and rudder), and reduced controllability of the airplane.

Since issuance of that proposal, Dassault Aviation has issued Service Bulletin F900-38-2 (F900-83), dated April 25, 1991, which describes procedures to modify the collector drains by separating the frame 25 center drain from the washbasin collector drain connected to the drain stub, thereby avoiding simultaneous failure of both drains in the event of failure of the drain stub. This service bulletin also adds airplanes to its effectivity. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified this service bulletin as mandatory.

The FAA has examined the findings of the DGAC, reviewed the new service information, and has determined that the proposed rule must be revised to require modification of the collector drains as terminating action for the repetitive inspections of the box structures surrounding the flight controls at frame 25 intended to detect clogged drains. The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

The proposed rule has also been revised to include additional airplanes in its applicability. These additional airplanes have been identified as being subject to the unsafe condition addressed by this rulemaking action.

Since the new proposed requirements go beyond the scope of those originally proposed, the comment period has been reopened to provide additional time for public comment.

The modification number was incorrectly cited in one portion of the original proposal; the modification number has been replaced in the new proposed rule with a reference to Dassault Aviation Falcon 900 Service Bulletin 83, dated April 25, 1991.

Avions Marcel Dassault-Breguet Aviation is referred to as Dassault Aviation throughout this proposal due to a corporate name change.

Paragraph (e) has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

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

The format of this Supplemental NPRM has been restructured to be consistent with the standard **Federal Register** style.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD, that it would take approximately 33 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. The estimated cost for required parts is $1,772 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $143,480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.19 is amended by adding the following new airworthiness directive:

Dassault Aviation (formerly Avions Marcel Dassault-Breguet Aviation): Docket No. 91–NM–31–AD.

Applicability: Model Mystere Falcon 900 series airplanes; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent stiffness of the center engine power control and/or flight controls (elevator and rudder), and reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 7 days, accomplish paragraphs (a)(1) and (a)(2) of this AD:

(1) Verify proper operation of the drain stub heating, in accordance with the manufacturer's Maintenance Manual (reference Procedure 30–700).

(2) Verify freedom from clogging of the system by pressurizing the fuselage on the ground to a cabin pressure altitude of Z = −1,500 feet using the engines or APU, and by checking with the hand that air flows out of the drain stub, in accordance with the manufacturer's Maintenance Manual (reference Procedure 21–311).

(b) Within 90 days after the effective date of this AD, perform the modifications and inspections specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, which constitute terminating action for the requirements of paragraph (a) of this AD.

(1) On drain stub Part Number C49RD0033, eliminate the 3 mm. diameter restrictor and enlarge the outlet cross-section, in accordance with Dassault Aviation Service Bulletin F900–38–1 (F900–82), dated October 4, 1990.

(2) On the drainage system, add protective screens to the drainage holes of the water collector under the washbasin, in accordance with Dassault Aviation Service Bulletin F900–38–1 (F900–82), dated October 4, 1990; and install a protective screen to the drainage holes on each side of the center beam, in accordance with Dassault Aviation Service Bulletin F900–53–5 (F900–57), dated October 4, 1990.

(3) Following the installation of the modifications required by paragraphs (b)(1) and (b)(2) of this AD, prior to further flight, check the stub heating for proper operations, in accordance with Procedure 30–701 in the manufacturer's Maintenance Manual, and inspect and clean the modified drain holes.

(c) Within 300 hours time-in-service after the effective date of this AD or within 6 months after accomplishing the modifications required by paragraph (b) of this AD, whichever occurs first; and thereafter at intervals not to exceed 300 hours time-in-service or 6 months, whichever occurs first; accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD, in accordance with Dassault Aviation Service Bulletins F900–38–1 (F900–82) or F900–53–5 (F900–57), both dated October 4, 1990, as applicable:

(1) Check the stub heating for proper operation.

(2) Inspect and clean the drain hole protective screens.

(3) Verify correct water drainage via the frame 25 and washbasin collector drains.

(d) Within 12 months after the effective date of this AD, modify the collector drains in accordance with Dassault Aviation Falcon 900 Service Bulletin F900–38–2 (F900–83), dated April 25, 1991. Installation of this modification constitutes terminating action for the repetitive inspections required by paragraph (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 14, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–28359 Filed 11–25–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 816

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program; Availability of Decision; Use of Explosives; Denial of Petition

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

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available to the public its final decision on a petition for rulemaking from Ms. Shirley Zell and Mr. John Albrecht of Clinton, Indiana. The petition requested that OSM amend certain provisions of 30 CFR 816.62, Use of Explosives: Preblasting Survey; and of 30 CFR 816.67, Use of Explosives: Control of Adverse Effects.

DATES: On November 20, 1991, the Director denied the petition.

ADDRESS: Copies of the petition, and other relevant materials comprising the Administrative Record of this petition are available for public review and copying at Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Administrative Record, room 5315, 1100 L Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Michael Rosenthal, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1020 15th Street, Brooks Towers, 2nd Floor, Denver, Colorado 80202; Telephone: 303–844–2755 (Commercial) or 564–2755 (FTS).

SUPPLEMENTARY INFORMATION:

I. Petition for Rulemaking Process

II. The Zell/Albrecht Petition

I. Petition for Rulemaking Process

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), any person may petition the Director of OSM for a change in OSM's regulations. The regulations governing the handling of rulemaking petitions are found at 30 CFR 700.12. Under the rules, the Director may publish a notice in the **Federal Register** seeking comments on the petition and hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under 30 CFR 700.12, the Director's decision constitutes the final decision for the Department of the Interior.

II. The Zell/Albrecht Petition

OSM received a letter dated November 1, 1989, from Ms. Shirley Zell and Mr. John Albrecht of Clinton, Indiana petitioning the Director to amend certain parts of OSM's regulations governing the use of explosives at underground mining operations (30 CFR 817.62 and 817.67). In response to that petition, on December 6, 1989, OSM published a notice in the **Federal Register** of the petition's availability and requested comments. (54 FR 50414) On December 28, 1989, OSM, responding to requests from commenters, extended the close of the original 30-day comment period until January 22, 1990. (54 FR 53329)

On December 20, 1991, Ms. Zell and Mr. Albrecht requested the November 1, 1989 petition be withdrawn and replaced with the revised petition. The petitioners indicated they were withdrawing the original petition because it mistakenly recommended rulemaking for underground mining operations rather than for surface mining operations at 30 CFR 816.62 and 816.67. OSM published a notice withdrawing the November 1 petition for rulemaking on January 22, 1990. (55 FR 2111) On the same day, OSM published the new petition for rulemaking proposing amendments to the surface mining regulations and providing a comment period until February 21, 1990. (55 FR 2105)

For the reasons discussed in the appendix to this notice, the Director has denied the petition to amend 30 CFR 816.62 and 816.67. Therefore, no rulemaking will occur on this petition.

The Director's letter of response to the petitioners on this rulemaking petition appears as an appendix to this notice. This letter reports the Director's decision to the petitioners. Included in the appendix is an evaluation report on the issues raised by the petitioners which discusses the current OSM regulatory program provisions covering the use of explosives, an analysis of the petitioners' proposed regulatory changes, and a discussion of the comments received on the petition.

Dated: November 20, 1991.

Harry M. Snyder,

Director.

Appendix

November 20, 1991.

Ms. Shirley Zell and Mr. John Albrecht, RR #1, Box 3, Clinton, Indiana 47842.

Dear Ms. Zell and Mr. Albrecht: This letter is in response to your petition for rulemaking dated December 20, 1989, to the Office of Surface Mining Reclamation and Enforcement (OSM) requesting an amendment to the regulations concerning preblasting surveys and the control of adverse effects of blasting at surface coal mining operations.

Following the receipt of your November 1, 1989, letter petitioning OSM to initiate rulemaking to amend certain regulations governing blasting found at 30 CFR 817.62 and 817.67, OSM published on December 6, 1989, in the **Federal Register** a notice of availability and requested comments on that petition. [54 FR 50414] Several commenters requested an extension to the comment period. On December 28, 1989, OSM extended the original 30-day comment period to January 22, 1990. [54 FR 53329]

On December 20, 1989, you requested the November 1, 1989, petition be withdrawn and replaced with the revised petition. You indicated you were withdrawing the original petition because it mistakenly recommended rulemaking to 30 CFR 817.62 and 817.67 pertaining to blasting for underground mining operations rather than 30 CFR 816.62 and 816.67 pertaining to blasting for surface mining operations. On January 22, 1990, OSM withdrew your November 1, 1989, petition [55 FR 2111] and published a notice of availability of the revised petition and request for comments. [55 FR 2105]

The official administrative record log lists 77 comments and documents entered in response to the petition. The comment period closed on February 21, 1990.

Since 1977, OSM has spent $1.4 million in research to develop and implement a regulatory program to control the adverse effects of blasting at surface coal mines and to evaluate the possibility that those regulations may not be effective. Almost half of all these studies have been initiated since 1989 with the specific purpose of thoroughly studying the claim that the damage to homes in the Daylight and McCutchanville areas of Indiana resulted from blasting. OSM's technical staff as well as technical specialists from the State of Indiana, the U.S. Bureau of Mines (BOM), and other Federal and state agencies have spent numerous hours studying this problem. After all the time, effort, and research, a direct correlation between blasting at permissible regulatory limits and the damage to homes alleged to have been caused by such blasting cannot be established. There is, therefore, no technical justification to amend existing limits to the levels proposed by the petitioners.

After careful consideration of the arguments presented in the petition and the extensive public comments, I am denying your rulemaking request to amend 30 CFR 816.62 and 816.67 concerning preblast surveys and controlling the adverse effects of blasting, respectively. These regulations applicable to blasting operations are already sufficient to prevent damage to structures and injury to persons.

In September, 1991, OSM funded three new projects to look at new questions associated with blasting. If the research identifies a causal relationship between blasting and damage, existing regulations require that applicable airblast and ground vibration limits be reduced to a level necessary to prevent damage. If the research points to a nationwide regulatory problem, regulatory changes, as appropriate, may be considered.

OSM's regulations governing petitions for rulemaking at 30 CFR 700.12(c) prescribe that technical justifications, facts, or law previously considered during rulemaking on the same issue shall not provide a reasonable basis to repeal or amend a current regulation. The majority of the issues raised and arguments presented in your petition were previously addressed in the preamble to the current blasting regulations of March 8, 1983. [48 FR 9788] With regard to the specific allegations that blasting caused damage is occurring beyond the permit area in the Daylight and McCutchanville areas of Indiana, extensive studies have been unable to scientifically establish a direct causal relationship between the blasting and the damage to the structures. On this basis, I must conclude that existing regulations satisfy the Act in making adequate provisions for the adverse effects of blasting to be regulated in such a fashion as to prevent damage to structures beyond the permit area.

The basis for my decision is fully discussed in the enclosed evaluation of the petition. As provided in 30 CFR 700.12(d), my decision constitutes the final decision for the Department of the Interior.

Sincerely,

Harry M. Snyder,

Director.

Evaluation of the Petition to Amend OSM's Rules Governing Blasting at Surface Coal Mining Operations

I. Summary of Findings

Under section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act), any person may petition the Director for a change in OSM's regulations. The rules governing the handling of rulemaking petitions are found at 30 CFR 700.12. To accept a

petition for rulemaking, the petition must cite facts, technical justification, or law which was not previously considered in a petition or prior rulemaking and which justifies a need for a new rule or amending an existing rule.

On December 20, 1989, OSM received a petition from Ms. Shirley Zell and Mr. John Albrecht of Clinton, Indiana (the petitioners) to amend certain parts of OSM's regulations governing the use of explosives at surface mining operations (30 CFR 816.62 and CFR 816.67). On January 22, 1990, OSM published a notice in the **Federal Register** containing the petition for rulemaking and providing a public comment period until February 21, 1990. (55 FR 2105).

The principal recommendations in the petition are to—

—Amend the rules governing preblasting surveys by expanding to one (1) mile the distance from the permit area that an operator must notify residents or owners of dwellings or structures from the current ½ mile;

—Amend the rules governing the control of adverse effects of blasting by reducing to a peak particle velocity (ppv) of 0.5 inch per second (ips) the maximum allowed ground vibration from a distance dependent range of 0.75 ips to 1.25 ips;

—Amend the alternative blasting level criteria by adding a new low frequency vibration limit of 0.5 ips that would apply to older structures; and,

—Delete from the rules governing the control of adverse effects of blasting that section which allows the use of the scaled-distance formula without accompanying seismic monitoring.

The petitioners claim that blasting damage has occurred to homes outside the permit areas of surface coal mine operations as a result of a failure of OSM's permanent program regulations to provide adequate protection. In support of the petition, they state that the data used by OSM in its regulations to set maximum ground vibration levels were limited to blasting events on undisturbed geologic settings; did not include data representative of newer blasting techniques, specifically cast blasting; and that the regulations themselves do not provide for the response of older structures to vibrations from blasting. The petitioners claim that recent studies show that low frequency, long duration vibrations are common at strip mine operations and are different from the high frequency data OSM used to develop its regulations. Finally, the petitioners state their belief that the use of the scaled-distance formula without seismic monitoring does not provide adequate regulatory control to prevent abuse by operators.

The foundational justification for the petitioners' proposal is the uncontested fact that homes beyond the permit area have suffered damage. The petition and supporting public comments allege that the damage is a direct result of blasting at surface coal mining operations. That people may suspect that blasting damage is occurring to their homes because they feel the vibrations from blasting does not, however, establish the fact of blasting damage nor lead to the inevitable conclusion that the regulations which control such blasting are faulty. Cracks in walls, for instance, may result from stresses caused by many factors such as weather, settling, problems with foundations, etc., as well as blasting vibrations. Even if the damage could have been traced to blasting at a surface coal mine, the regulations themselves have not been shown to be inadequate.

Since 1977, OSM has spent $1.4 million in research to develop and implement a regulatory program to control the adverse effects of blasting at surface coal mines and to evaluate the possibility that those regulations may not be effective. Almost half of all these studies have been initiated since 1989 with the specific purpose of thoroughly studying the claim that the damage to homes in the Daylight and McCutchanville areas of Indiana resulted from blasting. OSM's technical staff as well as technical specialists from the State of Indiana, the U.S. Bureau of Mines (BOM), and other Federal and state agencies have spent numerous hours studying this problem. After all the time, effort, and research, a direct correlation between blasting at permissible regulatory limits and the damage to homes alleged to have been caused by such blasting cannot be established. There is, therefore, no technical justification to amend existing limits to the levels proposed by the petitioners.

Research continues. In September, 1991, OSM funded three new projects to look at new questions associated with blasting. If the research identifies a casual relationship between blasting and damage, existing regulations require that applicable airblast and ground vibration limits be reduced to a level necessary to prevent damage. If the research points to a nationwide regulatory problem, regulatory changes, as appropriate, may be considered.

OSM's blasting regulations place a heavy responsibility on a regulatory authority to set more stringent blasting limits or impose specialized monitoring systems when needed to prevent damage. See, among other requirements, 30 CFR 816.67(a), (b)(1)(ii), (d)(5), and (d)(6). Regulatory authority discretion is needed because, to a large degree, the effects of blasting are governed by site specific conditions. Weather, geology, type and amount of overburden, and the nature of structures outside the permit area all will determine the nature of the blast and the level of control needed to provide protection. Displacing much of the regulatory authority's discretion through stricter national standards is not an effective solution to respond to allegations of site specific problems. Whatever regulatory limits exist in the national regulations, there will always be a requirement for the regulatory authority to ensure that the national limits will be reduced, when necessary, to provide damage protection for the site under permit. The imposition of stricter national standards would be justified if it were demonstrated that a problem existed that was not limited in geographic scope and was caused by inadequate limits in the existing rules. No such demonstration has been made in this proceeding.

OSM believes the most effective way of handling site specific concerns is not to remove discretion from the regulatory authority but to ensure that the regulatory authority has all the tools necessary to do an effective job. OSM is committed to ensuring that regulatory authorities have ready access to the computer software to plan and evaluate permit applications, training for their inspectors and permit evaluators, and, if needed for specialized problems, technical specialists from OSM.

After thoroughly analyzing the facts, technical justification and law submitted by the petitioners and over 70 public commenters, the Director is denying the petition for rulemaking. Existing regulations satisfy the requirements of the Act in making adequate provision for the adverse effects of blasting to be regulated in such a fashion as to prevent damage to structures beyond the permit area. Detailed explanations of OSM's findings regarding each of the petition's proposals are provided in the following two sections. Section II. presents the findings for those proposed amendments dealing with preblasting surveys. Section III. presents the findings for those proposed amendments dealing with controlling the adverse effects of blasting.

II. Proposed Amendments to 30 CFR 816.62, Use of Explosives: Preblasting Survey

A. Distance of Survey Notifications

The petition proposes to amend 30 CFR 816.62(a) by increasing the distance in which the operator must notify residents of the availability of a preblasting survey from 1/2 mile to one mile from the permit area. The preblasting survey documents any preblasting damage and other physical factors that could reasonably be affected by blasting. The petition and several commenters justified the change on complaints from citizens beyond the 1/2 mile distance about damage which they believed was caused by blasting. The petitioners and some commenters attributed damage to structures beyond the 1/2 mile survey limit, in part, to the fact that low frequency waves which dominate at longer distances are the frequencies most likely to cause damage to homes. Petitioners and some commenters added it would be in the operator's interest to expand the distance to protect himself from unsubstantiated damage claims.

While the petitioners and commenters have provided allegations and assertions about the inadequacy of the 1/2 mile limit, they failed to provide any technical facts or justification to prove these allegations. The existence of citizen complaints and even damage beyond the 1/2 mile limit does not mean the regulations are inadequate. The citizen complaints and the damage must be the result of events which are otherwise within regulatory limits for the regulations themselves to be the cause of the problem. The dominance of low frequency waves at longer distances and the fact that low frequency waves are most likely to cause damage to homes does not mean that the 1/2 mile limit does not provide adequate control. Finally, there is nothing in the present rules which prevents coal companies from offering preblasting surveys to a wider area, should they desire.

Industry commenters cited two cases for the proposition that the Secretary has no discretion to expand the survey distance beyond the prescription of section 515(b)(15)(E) of the Act. While these cases are distinguishable, OSM agrees with the general proposition that the Secretary cannot promulgate rules when no statutory authority exists to do so. OSM is, however, unwilling to say that no circumstances could ever exist which would provide an adequate basis and purpose for extending the survey requirement beyond the present 1/2 mile limit.

OSM previously considered the possibility of requiring notification of residents and owners beyond 1/2 mile during the 1979 rule making and concluded that the 1/2 mile distance was adequate. (44 FR 15182, March 13, 1979) The 1/2 mile distance in 30 CFR 816.62(a) is taken from the statutory language implemented by this regulation.

OSM has expended substantial monies in research related to investigating complaints of blasting damage occurring outside the permit area and beyond the 1/2 mile survey limit. As noted earlier, these studies were unable to correlate structural damage to specific blasting events or distances. If OSM were to increase the preblasting survey distance to one mile, in most cases there could be a significant increase in cost associated with performing such surveys. To justify an increase to a mile, OSM requires a substantial showing that the current 1/2 mile distance is not accomplishing the statutory purpose.

OSM finds that this issue was considered in a prior rulemaking and that neither the petitioners nor commenters who favored the change have provided new facts which either demonstrated that the 1/2 mile limit is inadequate nor why a one mile distance [as opposed to some other distance] is needed.

B. New Owners of Property

The petition proposes to amend 30 CFR 816.62(d) to require operators to provide a copy of the preblasting survey to a new [i.e., subsequent] owner of the property on request. The petition failed to provide a justification for the new requirement.

Existing OSM regulations already provide a reasonable opportunity for adequate notice. 30 CFR 816.62 (a) requires that a copy of the preblasting survey must be given both to the person requesting the survey and to the regulatory authority. In addition, the preblasting survey is a part of the permit and, therefore, a public document which would be available to the subsequent owner (or resident) of a dwelling or structure.

The exchange of title between the buyer and seller of a previously surveyed residence is a transaction which does not involve the operator. The subsequent owner can also obtain the preblasting survey directly from the previous owner in the course of the purchase just as he would with other documents pertaining to the structure or transaction.

OSM finds there is no justification provided by the petitioners as to why these regulations should be amended nor any justification as to why the operator should bear the cost of disseminating publicly available information for a transaction in which he had no part.

C. Survey Shall Determine Blasting Design Requirements

In three places the petition proposes to amend the current rules by expanding the traditional role of the preblasting survey from a description of a structure's preblasting condition to also that of a determinant of the blasting design. In 30 CFR 816.62(c) the petition proposes the "survey [vice operator] shall determine the condition * * * that could reasonably be affected by blasting". In § 816.62(e) the petition states that the preblasting report may contain "recommendations of any special conditions or proposed adjustments to the blasting plan that should be incorporated into the blasting plan to prevent damage". In § 816.67(d)(4) the petition proposes that the "maximum allowable ground vibration shall be reduced * * * if so recommended in any preblasting or condition survey". Read together these three changes would add a new dimension to the traditional role of the preblasting survey. By requiring recommendations made in the survey to be followed by the person designing the blasting plan, the "survey" becomes a determining factor in the blast plan. The petitioners' justification for these proposals is, at best, unclear. The petitioners claim that actual damage to structure is dependent not only on the peak particle velocity but also on the type of structure, the height of the structure and the state of repair or disrepair. The petitioners do not, however, link these conditions with their proposal to change the traditional role of the preblasting survey to also include serving as a determinant of blasting design.

During the 1979 rulemaking, OSM rejected a comment recommending the mandatory implementation of blasting plan recommendations which might appear in the preblasting survey. (44 FR 15183) OSM concluded then, and continues to believe now, that the professional qualifications needed to properly perform a preblasting survey of a structure or residence were not necessarily the same qualifications needed to make recommendations for blasting plans. OSM's rules at 30 CFR 780.13 clearly place responsibility for designing a blasting plan on the permit applicant and responsibility for approval on the regulatory authority.

One commenter who opposed the rulemaking petition echoed OSM's 1979 reasoning for rejecting mandatory survey recommendations by noting that preblasting surveys are often conducted by claims adjusters and other persons who may not have any blasting expertise since none is needed to document a structure's condition. Such persons would not necessarily be qualified to recommend adjustments to a blasting plan.

Persons performing the preblasting survey cannot be relied on to make competent recommendations regarding blasting at a mine site. The preblasting survey describes the condition of the residence or structure and is only performed on structures and dwellings when requested. Also, the preblasting survey would not include information on seismic or geologic conditions or on weather conditions, all of which are important factors in designing blasts.

OSM finds that the petition has failed to provide a reasonable basis for its proposal the subject matter of which was previously considered and rejected in a prior rulemaking.

D. Condition Survey

The petition proposes to amend 30 CFR 816.62(d) to add a "condition survey" which may be requested by the resident or owner of a dwelling or structure after the start of blasting. The petition does not discuss why such a survey is needed.

The current regulations at 30 CFR 816.62(e) require an operator to give ample notice of the availability of a preblasting survey and to perform a preblasting survey prior to the initiation of blasting if requested 10 days prior to blasting. The regulations also provide for requesting an updated preblasting survey after any additions, modifications, or renovations to a dwelling or structure. These provisions allow the operator to efficiently schedule the requested surveys.

Several commenters opposed the proposal on the grounds that it would place an undue burden on an operator who could be subjected to repeated requests for surveys by residents or owners. OSM is sympathetic to this concern, particularly when residents or owners are provided the opportunity to request a survey on a timely basis prior to the initiation of blasting.

Also, OSM finds that nothing in the current regulations prevents a resident or owner of a dwelling or structure from requesting a preblasting survey at any time. More importantly however, the petitioners have not provided OSM with any justification of the need for this new category of surveys.

E. Form of Notification When Resident Disagrees With Survey

The petitioners propose to delete the provisions of 30 CFR 816.62(d) that a resident who disagrees with a preblasting survey submit "a detailed description of the specific areas of disagreement" to the operator and regulatory authority. In its place, petitioners propose to include a provision at 816.62(e) that the resident simply "notify, in writing" the operator and regulatory authority of the specific areas of disagreement. Here again, the petitioners have not provided justification for their proposal.

The current rules at 30 CFR 816.62(d) allow any written disagreement with the preblasting survey to be on the public record so it may be considered by the regulatory authority when deciding whether the permittee fulfilled his obligation. OSM understands the possible reluctance of certain residents to take the time to detail their disagreements with the survey, particularly since blasting damage may never occur. The survey, however, including a description of disputed results, serves as a record of the condition of the dwelling or structure. Thus OSM concludes that it is in both parties' interests that the record be complete and accurate.

Commenters opposing this proposal suggested the greater detail and specificity required in the existing regulations is of benefit in resolving any area of disagreement concerning the preblast condition of the property. These commenters were also concerned that under the proposed revisions the reporting requirements on the operator would be unfairly expanded, yet the regulations would undermine citizen cooperation in this process by removing the requirements to provide a detailed description as provided in existing rules.

OSM agrees with these comments and finds that the petitioners have not offered a sufficient basis for their proposal to amend the current rules.

F. Preblasting Survey Issues Raised by Commenters but not Included in the Petition

Commenters to the petition raised several issues related to preblasting surveys which, while not specifically included in the petition's proposal, will be responded to.

Commenters said that the notice of availability of preblasting surveys should be mailed by certified mail to each resident and that the operator should be responsible for seeing that everyone has received their notice. They also wanted the notice to fully explain citizens' rights and that OSM provide a prepared statement signed by the Director pointing out those rights to a survey. They also wanted the blasting schedule to be hand delivered and orally explained to all residents within one mile of the permit area and that the preblasting survey be mandatory. Commenters were concerned that an illiterate resident may not know how to request a preblasting survey.

Current regulations at 30 CFR 816.62(a) require the operator to notify, in writing, all residents within 1/2 mile of the proposed permit area of how to request a preblasting survey. Mailing the notice provides reasonable assurances that it will be received by the addressee. The commenters have not provided any facts which indicate that certified mail, hand delivery of the blasting schedule, or mandatory preblasting surveys are necessary for the regulatory authority to ensure that a permit applicant fulfilled his obligation under section 515(b)(15)(E) of the Act.

Current regulations also require the notice to explain how the resident may request a preblasting survey. The commenters have not provided a reasonable basis to conclude that these provisions are inadequate.

In 1979, OSM allowed oral requests for preblasting surveys and justified this as needed to accommodate illiterate residents. (44 FR 15183) This policy was changed in 1983 to require all requests to be written. The preamble to those final rules explained the basis of the change. OSM believes that written requests for surveys is the best method to provide control over the request and survey production process without placing undue burden on the regulatory authority's manpower or the persons requesting the survey. (48 FR 9793, March 8, 1983)

A commenter said that there should be a mandatory check of the quality and quantity of a domestic water source as part of the preblasting survey. OSM rules at 30 CFR 816.62(c) acknowledge that structures such as water systems warrant special attention but the survey may be limited to its surface condition and other readily available data. Application of the preblasting survey rules to the assessment of structures such as wells and water systems was fully discussed in the preamble to the 1983 blasting regulations. [48 FR 9793]

III. Proposed Amendments to 30 CFR 816.67, Use of Explosives, Control of Adverse Effects

A. Reduction of Peak Particle Velocity

Petitioners propose to amend 30 CFR 816.67(d)(2) by replacing the existing maximum peak particle velocities (ppv) for ground vibration which range from 0.75 inch per second (ips) to 1.25 ips with a single value limit of 0.5 ips. While petitioners provided no specific justification for their proposed 0.5 ips ground vibration limit, they and several commenters supporting the proposal pointed to the alleged inadequacy of existing ground vibration limits to prevent blasting damage outside the permit area. This position was supported by testimonial evidence including one commenter who provided, without citation, excerpts from testimony presented before the House Interior and Insular Affairs Subcommittee on Mining and Mineral Resources in April 1989 of citizens who had suffered damage to their homes.

The petitioners and several commenters were also concerned about the human response to blasting vibrations at existing ppv limits. One of these commenters cited to the prescriptions of section 515(b)(15)(C) of the Act that blasting be limited so as to "(i) prevent injury to persons." This commenter concluded that blasting vibrations should therefore be controlled so as to prevent possible psychological, physiological and emotional injury to persons. Another commenter cited to the preliminary injunction decision of the Federal district court in *Massa* v. *Peabody Coal Co.*, TH 88–63–C, slip op. at 20, 34 (S.D. Ind. August 4, 1989) which held that the blasting limits established by a regulatory authority, which were essentially the same as OSM's standards, were "not adequate protection for the plaintiff's peaceful and quiet use of their homes" and that many of the blasts caused "undue and unnecessary discomfort and inconvenience to the plaintiffs."

The petitioners and some commenters stated that OSM's current blasting regulations were faulty because they were developed for comparatively undisturbed geologic conditions and they failed to consider the structural responses to low frequency, long duration blasting vibrations.

The petitioners also claimed that the damage criteria used by OSM for its blasting regulations was developed to quantify the response of and damage to residential structures from small to intermediate sized blasts. The petitioners suggested that the "coal industry is using new methods, such as cast blasting which was not the technique being used when research was done that the current regulations were based on". They also claimed that cast blasting in association with long distance have greater damage potential to structures because of the large amounts of explosives used per delay in that form of blasting. Another commenter said that OSM did not take the effects of repeated blasting on structures into account when the blasting regulations were issued.

With regard to the concerns over possible adverse human response to blasting vibrations, the current regulations provide sufficient protection for those values protected by the Act. Section 515(b)(15)(A) accounts for the individual response to blasting effects in its requirement that "advance written notice be provided to * * * residents who might be affected by the use of such explosives * * * of the proposed blasting schedule * * *." Congress did not prohibit emotionally stress-producing blasts but made provision for affected residents to prepare for such blasts by providing notice of the blasting schedule. In this light, the prescription of section 515(b)(15)(C) to prevent "injury to persons" must be read as preventing physical injury from flying rock or other direct blast effects. OSM's regulations implementing the notice provision of section 515(b)(15)(A) are found at 30 CFR 816.64 and 816.66.

In 1979, OSM also considered the impact of repeated blasts on structures. OSM concluded that vibration data are typically of a single event and thus do not consider the accumulated effects from multiple blasts. One of these effects could be induced settlement. This as a contributing factor, although not a major one, in lowering the ground vibration limit from 2.0 ips ppv to 1.0 ips ppv, i.e., "several small vibrations may do as much damage as one large one". [44 FR 15197]

OSM wishes to correct information presented by the petition and some commenters regarding cast blasting. First, while cast blasting *per se* was not a specific type of blasting receiving separate analysis in Structure Response and Damage Produced by Ground Vibration from Surface Mine Blasting. (Bureau of Mines Report of Investigation 8507, Siskind and others, 1980) (hereinafter referred to as RI 8507), data in that report (see, for example, Table 1) included blasting events at surface coal mines with as much as 2,600 lb/delay and blasting events at surface iron mines, with 7 up to 21,000 lb/delay. The preamble to the 1983 rules also discussed the use of "delay blasting techniques available to conduct large blasts using this amount (5,900 pounds) per delay." (48 FR 9801) These amounts of explosives are comparable to those used in surface coal mine blasting. Therefore, the data used in RI 8507 and elsewhere considered in the 1983 rulemaking was not limited to small to intermediate sized blasts and included representative data to cover cast blasting sized events. Second, cast blasting is a blasting technique that has been used for over 50 years. While the term "cast blasting" only came into use in the early 1970's, prior to that time, cast blasting was called "hard blasting". Therefore, OSM was aware of cast blasting techniques when the 1983 regulations were issued. Third, cast blasting does not use more explosives per delay than in-place blasting but cast blasting may involve a larger total quantity of explosives per unit volume of overburden. Cast blasting is most effective when the delay period increases momentarily between successive rows. This slight increase in the delay period allows the overburden time to move outward, thus providing room for successive overburden movement during subsequent blasts. (U.S. Bureau of Mines, Stachura, RI 8916).

OSM rules have adopted the protections from blasting set forth in the Act. The regulations prevent injury to persons and damage to public and private property outside the permit area. The existing ground vibration limits were issued after considerable review and discussion of available research on blasting effects. Even so, OSM recognized during the development of its regulations that the prescribed peak particle velocity limits would not universally protect all structures, everywhere. Therefore, the regulations in § 816.67(d)(5) do require "[t]he maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection."

The foundational justification for the petitioners' proposal is the uncontested fact that homes beyond the permit area have suffered damage. The petition and supporting public comments allege that the damage is a direct result of blasting at surface coal mining operations. As discussed earlier in the Summary of Findings section, since 1977, OSM has spent $1.4 million dollars in research to develop and implement a regulatory program to control the adverse effects of blasting at surface coal mines and to evaluate the possibility that those

regulations may not be effective. Almost half of all these studies have been initiated since 1989 with the specific purpose of thoroughly studying the claim that the damage to homes in the Daylight and McCutchanville areas of Indiana resulted from blasting. OSM's technical staff as well as technical specialists from the State of Indiana, the U.S. Bureau of Mines (BOM), and other Federal and state agencies have spent numerous hours studying this problem. After all the time, effort, and research, a direct correlation between blasting at permissible regulatory limits and the damage to homes alleged to have been caused by such blasting cannot be established. There is, therefore, no technical justification to amend existing limits to the levels proposed by the petitioners.

A commenter, opposed to the petition's proposal, asserted that a 0.5 ips standard would increase operators' production costs and raise safety hazards for personnel because reduction of the ground vibration standard would require operators to reduce the size of the charge, thereby increasing the frequency of blasting. This commenter reasoned that reduced charge weights would make it more difficult to move or fragment the overburden and the greater frequency of blasting would increase the potential safety risk to personnel.

The justification for OSM's current ppv ground vibration limits is thoroughly discussed in the preamble to the 1983 rules and remains valid. (48 FR 9788) However, OSM also does not completely agree with the last comment opposing the change to 0.5 ips. If the overall peak particle velocity were reduced to 0.5 ips there would be a decrease in the total weight of explosives used per delay. This would not, however, necessarily increase the number of blasts. In order to reduce the maximum weight of explosives used per delay the blaster must either reduce the number of holes per delay or increase the number of delays per hole. This process would not necessarily increase the number of blasts nor put personnel at greater risk. Neither the petitioners nor the commenters have presented any technical justification supporting the 0.5 ips vibration level. Allegations regarding the inadequacy of the current rules to address blasting techniques have not been sustained. OSM does not believe a reasonable basis has been established for amending the current ppv ground vibration limits to the 0.5 ips level proposed by the petitioners.

B. Alternative Blasting Level Criteria

The petitioners propose to amend the alternative blasting level criteria incorporated as Figure 1 in 30 CFR 816.67(d)(4) by replacing it with the figure from appendix B of RI 8507. The proposed amendment to the blasting level criteria would add appendix B's separate ground vibration ppv limits at mid-range frequencies for the drywall and plaster type of construction of a protected structure. Noting that structural response varies from structure to structure and within each structure, the petitioners fault the OSM alternative blasting level criteria of 30 CFR 816.67 for not having the separate ground vibration limits for the two types of construction. For this reason the petitioners assert that OSM's alternative vibration standards do not adequately address structural response.

As discussed in the preamble to the 1983 rules, much of the data used in development of OSM's blasting regulations came from RI 8507. Data in RI 8507 were collected from a variety of blasting events during coal mining, iron mining, quarrying and construction. The blasting events also varied by use and included highwall, parting, and excavation shot types. OSM adopted the alternative blasting level criteria in Figure 1 of 30 CFR 816.67(d)(4) from appendix B of RI 8507. The only difference between Figure 1. in 30 CFR 816.67(d)(4) and the figure in appendix B is that OSM's regulation did not include the 0.5 ips ppv plaster limit which appears in the appendix but not in the regulations. The petitioners propose to reintroduce that limit. OSM's reasoning for not providing that limit in the blasting regulations was thoroughly discussed in the 1983 preamble and remains valid. (48 FR 9802)

C. Scaled-Distance Formula

1. Deletion of the Scaled-Distance Formula

The petitioners propose to delete existing section 30 CFR 816.67(d)(3) which authorizes the use of the scaled-distance formula without seismic monitoring for each blast. In support for the proposal the petitioners claim that the 8 millisecond (ms) delay period prescribed by the scaled-distance equation is invalid. Petitioners refer to "recent research" on this topic by the Bureau of Mines which suggests that, in some cases, the 8 ms delay may be insufficiently long for low frequency sites and should not be used in cases of vibration with dominant frequencies below 10 Hz. The petitioners do not recommend an alternative delay period, but instead propose to delete the use of the scaled-distance formula altogether.

As stated by the petitioners, OSM regulations requiring a minimum 8 ms delay are based on 1963 research by W.I. Duvall, *et al.* published in Vibrations From Instantaneous and Milliseconds Delayed Quarry Blasts (U.S. Bureau of Mines, RI 5161, 1963). Also, as the petitioners state, since 1963 very little research has been done on determining the optimum delay periods between blasts. One study, by Siskind, Stachura, and Nutting, Low Frequency Vibrations Produced By Surface Mine Blasting Over Abandoned Underground Mines (U.S. Bureau of Mines, RI 9078, 1987) (possibly the study the petitioners allude to) concluded that 8 ms may not be the optimum delay. The study, however, did not recommend an alternative delay period. Further study by Siskind, *et al.*, Comparative Study of Blast Vibrations from Indiana Surface Coal Mines (U.S. Bureau of Mines, RI 9226, 1989) reached a similar conclusion.

The 8 ms delay appears in OSM rules allowing the use of regulated scaled-distance factors. This rule appears at 30 CFR 816.67(d)(3)(i). The Bureau of Mines did not study the 8 ms delay as it applies to these particular scaled-distance factors. Instead, the Bureau of Mines studied the modified scaled-distance formula values which are regulated under a different rule, 30 CFR 816.67(d)(3)(ii). The Bureau's conclusions were based on a comparison between a modified scaled-distance formula's predicted peak particle velocity values and the actual peak particle velocities. Neither study compared OSM's scaled-distance factors in 30 CFR 816.67(d)(3)(i) against actual results. One further point, the Bureau of Mines results found that even though some of the peak particle velocities were higher than predicted none exceeded the regulatory maximum ground vibration levels. Therefore, none of these studies invalidate the use of scaled-distance equation of 30 CFR 816.67(d)(3)(i).

The 8 ms delay has also been a concern of the explosives industry but from the opposite perspective. In a paper cited to by a commenter and presented at the 1989 Annual Meeting of the Society of Explosives Engineers, The 8 millisecond Criterion: Have We Delayed Too Long in Questioning It? Douglas A. Anderson concluded that, "[t]he [8 ms] guidelines should not be promoted as a method of vibration control applicable to all operations, and should not be enshrined in regulations as a restriction on blast design where more sophisticated means to control vibration are available". Anderson recommends, "that scaled-distance based upon 8 ms separation be used only as a very conservative criterion to indicate worst case vibration levels".

These findings are recommending to the explosives industry to avoid using the 8 ms delay because it unnecessarily restricts the blast design, i.e., that separations can be found which would allow higher weights of explosives within the regulated ground vibration levels. For the present, OSM would rather maintain the existing "very conservative" standards which account for severe vibration levels than to provide for the use of higher weight of explosives. The existing rules strike a balance between the competing views and have not been shown to be inadequate.

OSM finds that the petitioners' proposals have been considered previously in rulemaking and have failed to provide facts, technical justification or law to support deleting the use of scaled-distance formula.

2. Confidence Interval

The petitioners and several commenters stated that RI 8507 and OSM regulation 816.67(d)(3)(ii) allow an acceptable probable range of damage to structures of 5%. They reason that a 95% confidence level allows for 5% of the structures in the vicinity of blasting to be damaged. They claim that this is in conflict with the Act because the Act requires that blasting be conducted to prevent damage to all structures, not just to 95% of the structures.

OSM rules at 30 CFR 816.67(d)(3)(ii) allow for a modification to the scaled-distance factor when an operator can demonstrate that the scaled-distance factor at a specific mine differs from that established as the national standard. Upon the collection of sufficient data and an analysis using statistical techniques the operator can generate a scaled-distance formula that meets the vibration limits of current regulation at a 95% confidence level.

The petitioners have misunderstood the purpose of a confidence interval. The confidence interval is a means of providing a margin of safety for the possibility that the data used in a sample may not accurately represent the population from which it was drawn. When developing a modified scaled-distance formula under 30 CFR 816.67(d)(3)(ii), an operator performs a regression analysis on a sample of data which includes the actual distance between the blast and the monitoring instrument, the actual charge weight of explosives, and the resulting peak particle velocity. The regression analysis computes a line representing the expected value of the scaled-distance. This line fully represents all the information contained in the data sample. But, because the sample of data may not truly represent the population, OSM requires an additional margin of safety to be added to the regression results. The confidence interval is a statistical specification of how to account for this possible error in the data. OSM, following the Bureau of Mines recommended methodology in RI 8507, prescribes a 95% confidence interval. The resulting regulated value of the modified scaled-distance formula will be the sum of the regression line plus a value equal to two standard deviations of the sample data.

Confidence intervals are a standard statistical technique discussed in most college level texts on statistical methods. The selection of the 95% confidence level, as opposed to other levels, was based on a recommendation of the Bureau of Mines, whose broad experience in the collection of blasting data provides them with an unparalleled understanding of the potential sources of errors in a sample. The 95% confidence level was employed, without challenge, in the 1983 rulemaking. [48 FR 9801]

OSM believes that the peitioners' challenge to the 95% confidence interval was based on an incorrect premise that a "95% confidence interval" allowed a certain level of damage to occur. In fact, a confidence interval adds to the protection afforded by the rules by compensating for the possibility that the sample used to compute a modified scaled-distance formula may contain errors.

D. Mandatory Monitoring and State Regulatory Authority Discretion

In concert with their proposal to delete the scaled-distance equation option provided by existing 30 CFR 816.67(d)(3), the petitioners also propose to amend the language in 30 CFR 816.67(d)(6) to require operators to monitor each blast. This requirement would replace the current provisions which require the regulatory authority to impose special, site-specific seismic monitoring, when necessary, under existing 30 CFR 816.67(d)(6).

The petitioners reason that there is no way for a regulatory authority to assess whether blasting is actually damaging property if the operator is not required to monitor each blast. They also say that, since blasting is not an exact science, continuous monitoring should be required so that problems can be discovered more readily. A commenter added that the regulatory authority should conduct random blasting level checks with a seismograph. The petitioners assert that they do not trust operators to honestly fill out the blasting record and that by not monitoring all blasts the door is open to the operator to falsify records.

OSM provided the justification for using scaled-distance formula without monitoring in the preamble to the 1983 rules. (48 FR 9801) In the 1979 rules, OSM acknowledged that scaled-distance formula is not considered to provide absolute protection against exceeding a specific ground vibration level. This was stated as one reason for retaining the provision which authorized the regulatory authority to monitor any blast at any time. [44 FR 15201] The monitoring provision was retained in the 1983 rulemaking and now appears at 30 CFR 816.67(d)(6).

With regards to the concerns for falsification of blasting records, OSM has established a training program for state and Federal inspectors in the field of explosives and blasting including training in monitoring ground vibration and airblasts and analyzing records and monitoring data. Inspectors are trained on how to examine a blasting log and in the techniques to detect a blasting log containing false information. Falsification of a blasting log is a serious matter and, when discovered, enforcement action is taken in accordance with 30 CFR 850.15(b) and other applicable regulations.

One commenter, supportive of the proposal, said that the option of setting more stringent site specific standards by the regulatory authority has proven ineffective. While there may be isolated differences of opinion between a regulatory authority and homeowners as to whether blasting within the regulatory limits is causing damage to residences and structures, this does not establish any claim as to the ineffectiveness of the current rules. To the extent that OSM becomes aware of instances that the regulatory authority is not sufficiently implementing its rules, there is an issue of oversight of the administration of that program and not an indication of the insufficiency of those rules. As stated earlier, OSM believes that part of the answer to the problem of assessing blasting damage is to ensure that the regulatory authority has all the tools necessary to do an effective job. OSM is committed to ensuring that regulatory authorities have ready access to the computer software to plan and evaluate permit applications, training for their inspectors and permit evaluators, and, if needed for specialized problems, technical specialists from OSM.

A commenter suggested that the regulations be amended to allow the regulatory authority to reduce the maximum peak particle velocity based

upon factors such as density of population, age, hydrology of the area, frequency of blasting or other factors. As discussed earlier, OSM rules currently require a regulatory authority to reduce ground vibration limits when necessary to provide protection from damage.

The same commenter suggested that the regulatory authority solicit public comments should fifteen citizens who are being affected by blasting operations make a request and that a public meeting be held if twenty-five citizens so request.

Current regulations allow a person who may be affected by blasting to make a citizen's complaint to the state regulatory authority under the provisions of 30 CFR 840.15. In addition to the specific performance standards for airblast and peak particle velocity, under 30 CFR 816.67(a), blasting is to be conducted to prevent injury to persons and damage to public or private property outside the permit area. If blasting is not conducted in such a manner, the operators would be in violation of § 816.67(a). The regulatory authority could, in such instances, prescribe a whole range of remedial measures. As a result of an investigation of a citizen's complaint, the regulatory authority would have the authority to issue a notice of violation, issue a cessation order, reduce both the airblast and peak particle velocity according to 30 CFR 816.67 (b)(1)(ii) and (d)(5), require monitoring of any or all blasts, and to take other appropriate actions. Thus no additional requirements appear warranted.

The petitioners ask whether the Bureau of Mines found low frequency airblasts that match the natural frequency of residential structures. In response, most airblast has a concussion component that is below 20 Hz. In many cases, the concussion component matches the natural frequency of residential structures. The Bureau of Mines found that airblast is less likely to crack walls than ground vibrations. Cracking occurs predominantly from shear and tensile wall strains that are produced by shearing rather than bending. However, airblasts are often responsible for the secondary rattling and annoyance effects (RI 8507).

Many commenters thought that the petition for rulemaking was fundamentally a response to a local problem based on localized conditions and that ample coverage for the petitioner' concerns could already be found at: 30 CFR 816.67(d)(5)—"The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection". 30 CFR 816.67(d)(6)—"The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement". 30 CFR 816.67(b)(2)(i)—"The regulatory authority may require airblast measurements of any or all blasts". OSM agrees that its rules governing blasting provide adequate authority for the regulatory authority to prevent the adverse impacts of blasting.

E. Other Issues Raised By Commenters But Not Included in the Petition

Commenters to the petition raised several issues related to the prevention of adverse effects of blasting which, while not specifically included in the petition's proposal, deserve a response.

1. Historic Structures

Several commenters were concerned that OSM blasting regulations were not adequate to protect historic structures from blasting damage. OSM notes that the rules governing the protection of historic structures were not a part of the petition. OSM provides regulations for protecting sites which encompass not only the effects of blasting but all other adverse impacts.

OSM regulations 30 CFR 779.12(b)(1) require that a permit application describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas (adjacent areas are areas outside the permit area where a resource, such as an historic structure, could be expected to be adversely impacted by mining). The existence of an historic structure in the vicinity of the proposed mining operation would, therefore, be identified during the permitting process.

OSM regulations 30 CFR 780.31(a)(1) and (b) require that the permit application contain a plan to prevent adverse impacts to these historic places. Historic places must be specifically protected from all adverse effects of mining, including blasting. If a lower ground vibration limit is necessary to protect any structure, the regulatory authority is required to set a lower peak particle velocity than those otherwise provided for in 30 CFR 816.67 in order to protect that structure. This requirement is clearly expressed in 30 CFR 816.67(d)(5).

OSM finds that the protection of historic structures is outside the scope of the petitioners' requested rulemaking and that adequate protection under SMCRA currently exists within the rules to prevent adverse impacts.[1]

2. Water Supplies.

Several commenters were concerned that blasting may cause damage to home water wells. OSM notes that the rules governing the replacement of water supplies adversely affected by surface mining activities were not a part of the petition.

OSM regulations at 30 CFR 816.41(h) require the replacement of a water supply if it is damaged or destroyed by surface coal mining activities, including blasting. A Bureau of Mines study, Survey of Blasting Effects on Ground Water Supplies in Appalachia, (Bureau of Mines OFR 8(1)–82, Philip R. Berger and Associates, Inc.) concluded that blasting has very little, if any, effect on water wells. But, if a well is damaged or destroyed through mining operations, protection is afforded through current regulations.

OSM finds that the replacement of water supplies is outside the scope of the petitioners' requested rulemaking and that adequate protection currently exists within the rules.

3. Fish and Wildlife

Several commenters asked OSM to consider the potential impacts blasting may have on fish and wildlife. They reason that noise cannot only be annoying to wildlife but also disruptive to their breeding and migration patterns. OSM notes that the rules governing the protection of fish and wildlife were not a part of the petition.

The Act of section 515(b)(24) requires that operators must "to the extent possible using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values". OSM regulations at 30 CFR 780.16 and 816.97 were specifically designed to protect fish, wildlife, and endangered and threatened species. Protection is also provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Bald Eagle Protection Act, as amended, (16 U.S.C. 668 *et seq.*) and other laws.

OSM finds that the present rules provide a level of protection consistent with the requirements of the Act and the comment is outside the scope of the petitioners' requested rulemaking.

[1] This decision is not intended to address OSM's compliance with the recent district court decision in *Indiana Coal Council* v. *Lujan*, Nos. 87–1067 and 87–1020 (D.D.C. 1991). Such compliance is proceeding independently.

4. Response Spectra Methods of Analysis

Several comments from firms in the explosives industry stated that the use of response spectra methods of analysis considers both the entire vibration time history as well as the dynamics of the structure and, therefore, is the best method of monitoring blasting events. They suggest that response spectra analysis is a tool that can be used as an accurate representation of possible damage potential. As discussed in the preamble to the 1983 blasting regulations, OSM acknowledged that response spectra techniques might prove to be the best substantiation of the actual damage range and does not wish to discourage its use as a means of providing a seismographic record of regulatory compliance. (48 FR 9800)

5. Subsidence

The petitioners assert that low-level vibrations and how they relate to subsidence need to be investigated. The petitioners did not include specific facts to justify their assertion.

OSM has not seen evidence to indicate that there is a connection between low-level vibrations and subsidence. Blast vibration researchers have observed a tendency of low frequency vibrations to increase near underground mines but they have also observed peak particle velocities to decrease with increased blast to structure distance (Explosives and Rock Blasting, Atlas Powder Company, 1987).

6. Underground Mining

One commenter, an underground mining operator, felt that they should be excluded from the blasting requirements of 30 CFR Part 816. OSM notes that regulations governing underground mining appear at 30 CFR part 817 which were not part of this petition.

[FR Doc. 91-28400 Filed 11-25-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

St. Marys Falls Canal and Locks, Michigan; Use, Administration, and Navigation

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice is published to advise interested parties that the Corps of Engineers, Department of the Army, will study the feasibility of modifying the annual opening date of the locks (Soo Locks) at the St. Marys Falls Canal, Sault Ste. Marie, Michigan. Interested party comments on the types of studies that should be done are hereby requested

DATES: Written comments and suggestions of the kind described in **SUPPLEMENTARY INFORMATION** below should be received by December 26, 1991.

ADDRESSES: Submit written comments and suggestions to:

Mr. William Willis, Chief, Planning Division, Detroit District, U.S. Army Corps of Engineers, P.O. Box 1027, Detroit, Michigan 48231-1027.

or deliver them to Mr. Willis at the Detroit District office at 477 Michigan Avenue, Detroit, Michigan, between the hours of 7:30 a.m. and 4 p.m. Monday through Friday. Comments and suggestions received, and other materials relevant to this notice, may be inspected at Mr. Willis' office during the same hours. An appointment may be required for inspection, so please call ahead to confirm availability and to avoid any conflicts with inspections by other interested persons. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kidby at Corps of Engineers Headquarters in Washington, DC, by telephone at 202-272-8839.

SUPPLEMENTARY INFORMATION:

Legal Authority

The legal authority for the regulation governing the use, administration, and navigation of the St. Marys Falls Canal and Locks is section 4 of the River and Harbor Act of August 18, 1894 (28 Stat. 362), as amended, which is codified at 33 U.S.C. 1. This statute requires the Secretary of the Army to "prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States" as the Secretary determines may be required by public necessity.

Background

The regulation governing the operation of the St. Marys Falls Canal and Locks, in 33 CFR 207.440, was adopted on November 27, 1945 (10 FR 14451), and has been the subject of nine amendments. The provision setting out the current opening date for the locks was adopted on October 30, 1956 (21 FR 8285). It established an opening date of April 1, subject to annual modification by the North Central Division Engineer if the public interest would be best served by the modification or in the event of emergency.

(The regulation also establishes the closing date for the locks as December 15, subject to the same discretionary or emergency authority of the Division Engineer, and also subject to extension to meet the needs of commerce, if shipping interests so request prior to November 1 and if certain weather and ice criteria are met. A Notice of Proposed Rulemaking to change the closing date to January 15 was published on April 3, 1991 (56 FR 13604). Although it is part of an overall attempt to establish a comprehensive annual plan of operations for the locks, as described below, that proposal is separate from the one described in today's notice.)

The opening date of the locks has been modified on a number of occasions. During the 1970's, as authorized by the River and Harbor Act of 1970, the locks were kept open for as long as the entire year in a demonstration program on winter navigation. Beginning with the 1980 navigation season, the following have been the opening dates of the Soo Locks: March 25, 1980; March 23, 1981; April 1, 1982; March 29, 1983; March 26, 1984; April 1, 1985; April 1, 1986; March 22, 1987; March 22, 1988; March 15, 1989; March 21, 1990, and March 21, 1991.

In March 1990, the Detroit District Engineer sent a letter to interested governmental, environmental, and business interests, proposing a comprehensive annual operating plan for the locks. It proposed a fixed closing date of January 15, as referred to above, and fixed opening date no earlier than March 15. The letter noted that the environmental studies on the proposal—supplemental environmental impact statements (EIS's) in 1979 and 1989 focused specifically on the closing date of the locks rather than the opening date. As a result, the letter stated that further environmental studies focused on the effects of opening dates between March 15 and April 1 would be conducted in order to establish an opening date that would address the needs of both commerce and the environment.

Proposed Studies

The purpose of today's notice is to advise interested parties that the Corps of Engineers will study the feasibility of an optimum fixed opening date for the Soo Locks, to describe the environmental studies currently contemplated as part of the study process, and to request public comments and suggestions on the nature of the

studies or other activities that should be undertaken.

The Corps of Engineers presently intends to conduct the following environmental studies.

First, the Cold Regions Research and Engineering Laboratories (CRREL) will conduct a study of the ice cover on the St. Marys River from February 15 to April 15 (or date of ice breakup). This study should improve understanding of ice conditions during the March 15 to April 1 period being considered for lock opening, in order to establish a date limit for opening, or, if necessary, criteria for opening.

CRREL will also conduct a study on the effects of traffic generated by lock opening on ice jams and ice breakup in the St. Clair River and Lake St. Clair. This study is intended to ascertain if additional lock-related ship traffic would create higher probabilities of ice jams or would accelerate ice breakup.

CRREL will also conduct a study to establish an improved vessel effects model. This study will build on previous studies on the major types of ice-related environmental effects of vessels.

The Detroit District will conduct a study on vessel traffic. This will quantify expected vessel traffic related to lock opening prior to April 1, to use as a basis for estimating the effects of vessel traffic and economic needs.

The Detroit District will also conduct a study on the effects of vessel traffic on recreation and ferry transportation in the connecting channels. This study is intended to determine any disruptive effects of vessel traffic on ice fishing, snowmobiling, other recreational activities, and the operations of Great Lakes ferries between March 15 and April 1.

The Detroit District will prepare a benefit-cost analysis of lock operation prior to April 1. It will determine the economic benefits and costs of various lock opening date alternatives.

A study of the potential effects of vessel traffic on fish reproduction will be performed. The study is intended to build on existing knowledge of vessel traffic effects on spawning, hatching, and other aspects of fish reproduction.

The Detroit District will conduct a study on the effects of ice breakup on shore structures. This work will build on existing estimates of potential damage caused by lock-related vessel traffic to structures located near navigational channels.

The Detroit District will also conduct a study on the effects of ice breakup on shore erosion and wetland vegetation. This work will update existing studies done to determine if navigation during ice breakup causes damage to wetland vegetation near navigation channels.

In addition to this requested comment period, the Detroit District will hold public meetings or workshops to allow interested parties to review and comment on the study direction, detail and findings.

Comments and Suggestions Requested

As it begins its study on this issue, the Corps of Engineers is hereby requesting public comments and suggestions on the nature and scope of its proposed studies, or any potential additional studies that might contribute to the effectiveness of the impact analysis. Comments and suggestions should be sent to the address noted in **ADDRESSES** above.

Dated: November 6, 1991.

Nancy P. Dorn,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 91-28349 Filed 11-25-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2300

[WO-320-4214-02 24 1A]

RIN 1004-AB92

Land Withdrawals; Removal of Regulations Covering Emergency Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the provisions in 43 CFR part 2300 of the existing regulations that are concerned with emergency withdrawals. These withdrawals are authorized by section 204(e) of the Federal Land Policy and Management Act (FLPMA) of 1976. The rule is being proposed because the statute is redundant and in part unconstitutional. The Secretary of the Interior can achieve essentially the same result through the normal exercise of his general withdrawal authority under section 204 of the FLPMA. Public lands may be removed from the operation of the public land laws, including the mining laws, just as rapidly by the approval of a withdrawal petition and publication of a notice thereof as the Secretary's issuance of an emergency withdrawal order and publication of a notice of the order. Section 204(e) in part provides that the Secretary of the Interior shall immediately make an emergency withdrawal when notified to do so by either the House Committee on Interior and Insular Affairs or the Senate Committee on Energy and Natural Resources (formerly the Senate Committee on Interior and Insular Affairs). This portion of the statute is unconstitutional for the reasons expressed in *Immigration and Naturalization Service* v. *Chadha*, 463 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983). However, in *National Wildlife Federation* v. *Clark*, 577 F. Supp. 825, 829 (D.D.C. 1984), the court ruled that even though the statute might in part be unconstitutional, the Secretary of the Interior was still obliged to order a committee-directed withdrawal until such time as his own regulation requiring him to take that action was rescinded. In the future, the Department of the Interior proposes to shield natural resource values requiring immediate protection by means of the withdrawal petition process and not by means of an emergency withdrawal. Consequently, there is no need to continue the emergency withdrawal regulations in 43 CFR part 2300.

DATES: Comments should be submitted by (December 26, 1991). Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 S Street, NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during the regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren (202) 208-6486.

SUPPLEMENTARY INFORMATION: This proposed rule would eliminate the provisions in 43 CFR part 2300 of the existing withdrawal regulations that relate to the emergency withdrawal provisions of section 204(e) of the FLPMA. Those provisions state that when the Secretary of the Interior determines or when either the House Committee on Interior and Insular Affairs or the Senate Committee on Energy and Natural Resources notifies the Secretary that an emergency exists that requires extraordinary measures to be taken to protect natural resource values that would otherwise be lost, the Secretary shall withdraw public lands in order to protect such values. The provisions of the first sentence of

section 204(e) of the FLPMA relating to the making of emergency withdrawals are basically redundant. That is to say, without invoking section 204(e), essentially the same result may be achieved through the normal exercise of the Secretary of the Interior's general withdrawal authority under section 204 of the FLPMA. Acting on his or her own initiative or at the request of any committee of the Congress, the Secretary may, without delay, protect natural resource values either in an emergency or a nonemergency situation for as long as 2 years by publishing a withdrawal proposal notice in the **Federal Register**. Such publication will segregate the public lands from disposition under the public land laws, including the mining laws. This process can be accomplished just as rapidly as a section 204(e) emergency withdrawal through the submission of a simple withdrawal petition. Publication occurs immediately upon approval of the petition pursuant to 43 CFR 2310.1–3(e). If during the segregative period, studies and analyses demonstrate that additional time is necessary to protect natural resources, then the Secretary may withdraw the segregated lands for such time as the Secretary deems necessary, subject to the limitations in section 204 as to the duration of withdrawals. The provisions of section 204 concerning notices and reports will continue to be observed in all respects.

In *Immigration and Naturalization Service* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983), the Supreme Court held a one-house veto to be unconstitutional. The reasoning of the Justices in that case also impugns the constitutionality of the provision in Section 204(e) of the FLPMA sanctioning a committee-directed withdrawal. Accordingly, the constitutionality of Section 204(e) of the FLPMA was raised and argued by the Department of Justice in *Pacific Legal Foundation* v. *Watt*, 529 F. Supp. 982, motion for reconsideration denied 539 F. Supp. 1194 (D. Mont. 1982), and in *National Wildlife Federation* v. *Watt*, 571 F. Supp. 1145 (D.D.C. 1983). In the latter case, the Secretary of the Interior declined to withdraw certain lands in the Fort Union Coal Region of Montana and North Dakota from coal leasing as directed by a resolution of the House Committee on Interior and Insular Affairs adopted pursuant to section 204(e). The Secretary argued on the advice of legal counsel that, among other things, the provision in section 204(e) providing for committee-directed withdrawals was an unconstitutional attempt at the exercise of legislative power. Plaintiffs challenged the Secretary's decision not to withdraw the lands at issue and sought to enjoin the Secretary from proceeding with a scheduled coal lease sale in the Fort Union region. In granting the plaintiffs' request for a preliminary injunction, the District Court noted the existence of 43 CFR 2310.5, and held:

> that defendant violated the APA when he treated as void a Department regulation in reliance on informal *ex parte* legal opinions, without notice and comment. Notice and comment would have afforded scholars and interested parties, including possibly counsel for the House of Representatives, the courtesy and the opportunity to do some of the research and analysis requisite to a reasoned decision about an original constitutional question and test the opinions of defendant's advisors.
>
> * * * * *
>
> All of the reasons why a department head's rule-making decisions must be the product of "reasoned decision making" after notice and comment should apply as much to a delicate and original question of constitutional law as to matters of fact and policy.
>
> * * * * *
>
> *National Wildlife Federation* v. *Watt*, 571 F. Supp. 1157–1158 (D.D.C. 1983).

In granting plaintiff's request for a permanent injunction on January 9, 1984, the District Court ruled that so long as the portion of 43 CFR 2310.5 sanctioning committee-directed withdrawals had not been rescidned pursuant to APA rulemaking procedures, the Secretary of the Interior was bound by this regulation to make a withdrawal when notified to do so by committee resolution. *National Wildlife Federation* v. *Clark*, 577 F. Supp. 825, 829 (D.D.C. 1984). The Court specifically declined to rule on the question of whether the committee-directed withdrawal provision in Section 204(e) of the FLPMA was constitutional. The Court's amended order of January 10, 1984, provided:

> that the defendants, their agents, servants, employees, attorneys, and representatives shall be stayed, enjoined, and restrained from issuing to, entering into, or otherwise vesting in any person rights to coal lease for tracts in the Fort Union Coal Region, unless and until (1) the House Interior and Insular Affairs Committee has effectively revoked the Committee Resolution of August 3, 1983; (2) the term of the Resolution has expired pursuant to the time limit imposed by 43 U.S.C. 1714(e); (3) defendant has, after notice and rulemaking in accordance with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, rescinded the second clause of the first sentence of 43 CFR 2310.5(a); or (4) Congress has repealed, superseded or otherwise effectively rescinded the second clause of 43 U.S.C. 1714(e). Nothing herein shall prevent the defendants from proceeding with emergency leasing pursuant to 43 CFR 3425.1–4.

Because of its desire to maintain a harmonious relationship with the Congress, the Department of the Interior decided not to amend 43 CFR 2310.5(a) along the lines indicated in the court's order. Consequently, no action was taken to modify the regulation following the end of the Fort Union coal leasing litigation in 1984, and for some 6 years no committee invoked a committee-directed withdrawal.

Discussions of the constitutional issues are contained in *National Wildlife Federation* v. *Watt*, 571 F. Supp. at 1155–1157, and in *Pacific Legal Foundation* v. *Watt*, 529 F. Supp. at 1002–1003. These cases set forth the position of the Department of the Interior, as briefed and argued by the Department of Justice, regarding the constitutionality of section 204(e) of the FLPMA. The reasons expressed in the decision of the Supreme Court in *Immigration and Naturalization Service* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983), when considered in conjunction with the arguments set forth in the above cases, represent the legal bases upon which the Department of the Interior has concluded that section 204(e) of the FLPMA is unconstitutional.

With the foregoing in mind, it is proposed that in the future the policy of the Department of the Interior will be to shield natural resource values, when immediate protection from the operation of the general land laws is called for, by means of the withdrawal petition process as prescribed in 43 CFR part 2300, and not through the issuance of emergency withdrawal orders. Consequently, the emergency withdrawal regulations are no longer necessary. The adoption of this proposed rule as a final rule would remove all of 43 CFR 2310.5, including that portion sanctioning committee-directed withdrawals.

The principal author of this proposed rule is Jeff Holdren of the Division of Withdrawals and Withdrawal Review, BLM Washington Office (WO), with assistance from the Division of Legislation and Regulatory Management (WO) and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded

from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Because this proposed rule will remove requirements of existing regulations and will not impose any new requirements or burdens upon small business entities, the Department of the Interior has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). For the same reason, the Department of the Interior has determined that this document is not a major rule and therefore does not require a regulatory analysis under Executive Order 12291.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

This proposed rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 43 CFR Part 2300

Administrative practice and procedure, Electric power, Federal Energy Regulatory Commission, Public lands-withdrawal.

Under the authorities cited below, part 2300, group 2300, subchapter B, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2300—LAND WITHDRAWALS

1. The authority citation for part 2300 continues to read as follows:

Authority: 43 U.S.C. 1201; 43 U.S.C. 1740; Executive Order No. 10355 (17 FR 4831, 4833).

Subpart 2300—Withdrawals, General

2. Section 2300.0–1 is amended by removing the last sentence in paragraph (a).

Subpart 2310—Withdrawals, General—Procedure

3. Section 2310.1 is amended by revising paragraph (a) introductory text to read as follows:

§ 2310.1 Procedures—general.

(a) The basic steps leading up to the making, modification, or extension of a withdrawal are:

* * * * *

4. Section 2310.1–2 is amended by revising paragraphs (a), (c)(3), and (d) to read as follows:

§ 2310.1–2 Submission of applications.

(a) Applications for the making, modification, or extension of a withdrawal shall be submitted for filing, in duplicate, in the proper Bureau of Land Management office, as set forth in § 1821.2–1 of this title, except for applications that are classified for national security reasons. Applications that are classified for national security reasons shall be submitted, in duplicate, to the Office of the Secretary, Department of the Interior, Washington, DC 20240.

* * * * *

(c) * * *

(3) If the lands which are subject to an application are wholly or partially under the administration of any department or agency other than the Department of the Interior, the Secretary shall make or modify a withdrawal only with the consent of the head of the department or agency concerned. In such case, a copy of the written consent shall accompany the application. The requirements of section (e) of Executive Order 10355 (17 FR 4831) shall be complied with in those instances where the Order applies.

* * * * *

(d) If the preceding application requirements have not been met, or if an application seeks an action that is not within the scope of the Secretary's authority, the application may be rejected by the authorized officer as a defective application.

5. Section 2310.1–3 is amended by revising paragraph (c), removing paragraph (d), redesignating paragraph (e) as paragraph (d), and revising redesignated paragraph (d) to read as follows:

§ 2310.1–3 Submission of withdrawal petitions.

* * * * *

(c) If a petition is submitted simultaneously with a withdrawal application, the information requirements pertaining to withdrawal applications (See § 2310.1–2 of this title) shall supersede the requirements of this section.

(d) Upon the approval by the Secretary of a petition for withdrawal, the petition shall be considered as a Secretarial proposal for withdrawal, and notice of the withdrawal proposal shall be published immediately in the **Federal Register** in accordance with § 2310.3–1(a) of this title.

6. Section 2310.3 which consists solely of a heading is revised to read as follows:

§ 2310.3 Action on withdrawal applications and withdrawal proposals.

7. Section 2310.3–1 is amended by revising the first sentence in paragraph (b)(1) to read as follows:

§ 2310.3–1 Publication and public meeting requirements.

* * * * *

(b)(1) Except as otherwise provided in paragraph (a) of this section, within 30 days of the submission for filing of a withdrawal, extension or modification application, the authorized officer shall publish in the **Federal Register** a notice to that effect. * * *

* * * * *

§ 2310.3–3 [Amended]

8. Section 2310.3–3 is amended by revising paragraph (b)(2) to read as follows:

* * * * *

(b)(2) On the same day an order withdrawing 5,000 or more acres in the aggregate is signed, the Secretary shall advise, in writing, each House of the Congress of the withdrawal action taken. Pursuant to the Secretary's authority under the Act, the notices that are sent to Congress shall be accompanied by the information required by section 204(c)(2) of the Act (43 U.S.C. 1714 (c)(2)).

* * * * *

9. Section 2310.3–4 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising redesignated paragraph (c) to read as follows:

§ 2310.3–4 Duration of withdrawals.

* * * * *

(c) Withdrawals of specific duration may be extended, as provided for in § 2310.4 of this title.

§ 2310.5 [Removed]

10. Section 2310.5 is removed.

Dated: October 11, 1991.
Richard Roldan,
Deputy Assistant Secretary of the Interior.
[FR Doc. 91-28371 Filed 11-25-91; 8:45 am]
BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for a Plant, Astragalus Applegatei (Applegate's Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list a plant, *Astragalus applegatei* (Applegate's milk-vetch), as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species consists of three populations in Klamath County, Oregon. The largest population contains approximately 1,000 individuals, covering approximately 6 acres on private property. Another site on private property contains one plant. The third site, which is on State land, supports 10 plants. Survival of this species is threatened primarily by loss of habitat from urban development and road construction. This proposed rule, if made final, would extend the Act's protection to this plant. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by January 27, 1992. Public hearing requests must be received by January 10, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, suite 100, Portland, Oregon 97266 (503/231-6179 or FTS 429-6179). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Parenti, Boise Field Station, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705 (208/334-1931 or FTS 554-1931).

SUPPLEMENTARY INFORMATION:

Background

Astragalus applegatei (Applegate's milk-vetch) was first discovered near Klamath Falls, Oregon, in 1927 by Morton Peck. Peck subsequently collected the species again 2 miles (3.2 kilometers (km)) east of Keno, Oregon, in 1931, and then described it in 1936 (Peck 1936). It was thought to be extinct until it was rediscovered in 1983 by James Kagan of the Oregon Natural Heritage Program. This perennial herbaceous plant of the pea family (Fabaceae) grows to approximately 1 foot (0.3 meters) in height and reproduces only by seed. The Melissa blue butterfly (*Lycaedies argycogromon*) is a specific known pollinator. The anthers and stigma ripen at the same time, enabling self-pollination to occur. Plants produce light purple, pea-like flowers, and 0.3 to 0.5 inch (8 to 13 millimeter) seed pods at the same time during June and July. *Astragalus applegatei* can be distinguished from other species of *Astragalus* in the area by its slightly curved stems, the number and location of flowers, and its apparent inability to colonize dry, disturbed areas.

Astragalus applegatei grows in flat, open, seasonally moist remnants of floodplain alkaline grassland of the Klamath Basin. The species is a member of the *Poa nevadensis-Puccinellia lemmonii* grassland community (Oregon Natural Heritage Data Base 1985). This community is characterized as a bunchgrass flat, with about 10 to 20 percent exposed ground. The substrate is poorly drained, fine silt loam with an underlying hardpan at depths of 20 to 40 inches (51 to 102 centimeters). Periodic flooding was probably a natural feature of this habitat type. The adjacent community is alkaline open shrubland dominated by *Sarcobatus vermiculatus* and *Distichlis stricta*. *Sarcobatus vermiculatus* occasionally occurs in the grassland community.

Astragalus applegatei has been reported from four sites in Klamath County, Oregon. Extensive agricultural use has apparently extirpated the population located 2 miles (3.2 km) east of Keno, Oregon. The last known observation/collection at this site was in 1931. Further survey efforts have failed to locate the plant at this site (Yamamoto 1985). A second population at Laverne Avenue, Klamath Falls, Oregon, consists of a single, healthy plant with no sign of reproductive success.

One mile away, the third and the largest Klamath Falls population of over 1,000 plants occurs on 6 acres. This site may contain the only remaining viable population of this species. Threats to this population include development of businesses and roads. A major four lane avenue cuts through the population and has been constructed on land which may have supported some plants. Recent construction of a culvert over a large ditch that bisects the population has destroyed some plants and their habitat. An additional road may soon be under construction through the plant area. Another part of the population is situated on land posted with signs advertising future commercial development. The Oregon Field Office of The Nature Conservancy has negotiated unsuccessfully with the private landowner to lease this land for conservation purposes.

The fourth site consists of only 10 plants in an area less than 269 square feet (25 square meters) on the State's Klamath Wildlife Management Area. The plants are older and show no evidence of reproduction. This site is threatened by low population numbers, loss of habitat, grazing, and management controls which alter natural regimes (i.e., periodic wildfire and flooding).

Astragalus applegatei may be adversely affected by lack of seasonal flooding. Irrigation and water control among the Klamath River have eliminated occasional flooding that once occurred along floodplains supporting the species. Seasonal flooding is important in that it may provide openings for the establishment of *A. applegatei* and limit dominance of other species.

Federal action on this plant began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Astragalus applegatei* was considered to be threatened. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and gave notice of its intention to review the status of the plant taxa named therein. As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *A. applegatei*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Astragalus applegatei* was treated as a Category 1 candidate. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, and 1990. Publication of this proposed rule constitutes the final finding on the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus applegatei* Peck (Applegate's milk-vetch) are as follows:

A. *Present or threatened destruction, modification, or curtailment of habitat or range. Astragalus applegatei* occurs at three sites near Klamath Falls, Oregon. Extensive development has occurred in this area for many years and is continuing. At the site containing the largest *Astragalus applegatei* population, construction of a culvert in preparation to extend a new road has destroyed part of the population and habitat by compacting the soil, denuding the surface, and crushing plants under dumped dirt and wheels of construction equipment. Other plants within this population occur on adjacent land which is zoned for light industrial, general commercial, or heavy industrial use. If current land use patterns continue, this area will be further developed, eliminating this plant species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Astragalus applegatei* was only recently rediscovered; only six collections of the species exist. Because the plants are easily accessible by road, illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could become a threat to the species should the exact location of the remaining plants be publicized.

C. *Disease or predation.* The effect of herbivores on this species is unknown (Yamamoto 1985). Chewed stems and rabbit-like pellets were found within the largest Klamath Falls population. Because this plant is palatable to cattle, *Astragalus applegatei* does not occur in areas grazed by domestic livestock (James Kagan, The Nature Conservancy, pers. observation, 1985).

D. *The inadequacy of existing regulatory mechanisms. Astragalus applegatei* was listed as an endangered species under the Oregon Endangered Species Act in October, 1989. This statute prohibits the "take" of State-listed plants on State-owned or State-leased lands only. One population of *Astragalus applegatei* occurs on State-owned land, while the other two populations, comprising the majority of individuals, occur on private land.

Listing of this plant under the Federal Endangered Species Act would reinforce and supplement protection available to the plant under State law. Section 6 of the Act authorizes the provision of funding to any State which has entered into a cooperative agreement with the Service for development of conservation programs. The Act also would offer additional protection to the population of this plant that occurs on State land, because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

Habitat of *Astragalus applegatei* may be regulated as wetlands by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill into waters of the United States, including wetlands. Nationwide Permit Number 26 has been issued to regulate fill in wetlands under 10 acres. This Nationwide permit would apply to all sites where *A. applegatei* occurs. Under this permit program, the Corps circulates a predischarge notification to the Service and other interested parties for comment.

Individual permits are required for fill in wetlands greater than 10 acres. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an individual permit if resources are believed to be important regardless of the wetland's size. In practice, however, the Corps rarely requires an individual permit when a project would qualify for a Nationwide permit, unless a threatened or endangered species occurs on the site.

E. *Other natural or manmade factors affecting its continued existence.* The small number of populations and of individual plants of this species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals of this species.

The Laverne Avenue population, due to its size (one plant), is immediately threatened with extirpation. Inadvertent trampling, take, or a natural event such as an extremely dry year could easily destroy this population, and for this reason it is not expected to survive (Yamamoto 1985). The Klamath Wildlife Management Area population is threatened by flooding. The plants, which occur in a small, localized area near the river, would be destroyed if extensive flooding were to occur. The largest Klamath Falls population is also vulnerable to extirpation. Continued reduction of the size of this population would render this site more susceptible to other human-caused or natural disturbances.

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced

by this species in determining to propose this rule. Based on this evaluation, the preferred course of action is to list *Astragalus applegatei* as endangered. The few remaining number of individuals, poor species reproductive potential, and vulnerability to destruction by development and road building indicate that the species is in danger of extinction throughout all or a significant portion of its range, and therefore fits the definition of endangered as defined in the Act. Critical habitat is not being designated for this species for reasons discussed in the **Critical Habitat** section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to *Astragalus applegatei*. Publication of precise maps and descriptions required when critical habitat is designated would increase the degree of threat to this plant from possible take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for *A. applegatei* is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, and other human activities, and because it is unlikely to aid in conservation of this plant.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Astragalus applegatei does not occur on Federal land. Habitat for this plant, however, may be regulated by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Astragalus applegatei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such plants on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy the plant on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is uncommon in cultivation and is very rare in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432–ARLSQ, Arlington, Virginia 22203–3507 (703/358–2093 or FTS 921–2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus applegatei*;

(2) The location of any additional populations of *Astragalus applegatei* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Astragalus applegatei*.

Any final decision on this proposal to list *Astragalus applegatei* will take into consideration any comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as

amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Oregon Natural Heritage Data Base. 1985. Unpublished plant community classification list of Oregon. Portland, Oregon.

Peck, M. E. 1936. Six new plants from Oregon. Proc. Biol. Soc. Wash. 49: 111.

Yamamoto, S. 1985. Unpublished status report for *Astragalus applegatei*. Oregon Natural Heritage Data Base, Portland, Oregon. 35 pp.

Authors

The primary authors of this proposed rule are Jeri Williams and Dr. Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (208/334–1931).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Fabaceae—Pea family:						
*	*	*	*	*	*	
Astragalus applegatei	Applegate's milk-vetch	U.S.A. (OR)	E		NA	NA
*	*	*	*	*	*	

Dated: October 24, 1991.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–28403 Filed 11–25–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 911053–1253]

RIN 0648–AD89

Fee Schedule for Foreign Fishing

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes the 1992 fee schedule for the remaining foreign vessels permitted to conduct directed fishing operations in the U.S. exclusive economic zone (EEZ). The proposed schedule would maintain the poundage fee for any species that may be allocated for foreign fishing and the foreign vessel permit application fee at the levels adopted in 1991. Under this schedule, the owners or operators of foreign vessels paid $354 per fishing permit application and poundage fees for any allocation in foreign directed fisheries in relation to the exvessel value of the species taken. NMFS also proposes a technical change related to remittance of the fees.

Comments are requested on this fee schedule proposal. This action complies with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Comments must be received by December 26, 1991.

ADDRESSES: Send comments to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, or telex comments to telex no. 467856 (US COM FISH CI). Mark envelopes "Foreign Fees."

Copies of a regulatory impact review (RIR) related to the impact of fees set at the levels proposed are available at this address.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 301–427–2337.

SUPPLEMENTARY INFORMATION: NMFS proposes a schedule of permit application and poundage fees consistent with section 204(b)(10) of the Magnuson Act. These fees would apply to fishing, if any, in 1992 by foreign vessels in the EEZ.

The proposed schedule would revise 50 CFR 611.22 consistent with the requirements of section 106 of the Fishery Conservation Amendments of 1990 (Pub.L. 101–627). Section 106 revised section 204(b)(10) of the Magnuson Act by removing the requirement to establish fees to recover costs related to foreign fishing as determined by certain catch statistics, and required instead that the fees be only reasonable and non-discriminatory.

This notice proposes to continue the basic schedule applied in 1991, i.e., a schedule that could generate fee receipts of about $1.4 million in 1992 if allocations of 24,000 metric tons (mt) of Atlantic mackerel are made for foreign fishing and the Atlantic mackerel species fee is maintained at $58.33/mt. (The Mid-Atlantic Fishery Management Council recently voted to adopt a total allowable level of foreign fishing of zero; the implementation of this fee schedule does not imply availability of the species listed in the schedule for foreign directed fishing in 1992.) If other foreign fees are held at their 1991 levels, additional fees of $100 to $200 thousand could be generated by permit application fees and bycatch poundage fees in the Atlantic mackerel fishery for total potential colletions of $1.5 to $1.6 million should such allocations actually be made in 1992. Based on NMFS's experience in 1991, it has concluded that this would be a reasonable amount to recover from foreign fishing in 1992, and would not adversely affect joint venture business arrangements. It is also consistent with a NMFS process adopted over the last several years intended to keep the fees at the lowest levels but still recover reasonable revenues. Lastly, the proposed fees are

non-discriminatory because the owners or operators of vessels of all nations receiving allocations for directed fishing would pay the same fees. The reader is invited to refer to 56 FR 1575, January 16, 1991, for further information on foreign fishing fees.

NMFS has consulted with the U.S. Coast Guard and the Department of State on this proposal. Neither agency has objected to its publication.

Therefore, NMFS proposes that the 1991 permit application fee of $354 per vessel application be continued in 1992 and that poundage fees for Atlantic mackerel and related bycatch or other allocated species be maintained at their 1991 levels. The 1992 poundage fee for Atlantic mackerel is proposed to be $58.33/mt. As noted above, such fees could result in collections of $1.5 to $1.6 million in 1992. Table 1 of § 611.22(b)(1) is reprinted as part of this proposed rulemaking for the convenience of the commenters.

The Fishery Conservation Amendments of 1990 provide that tuna species come within the management jurisdiction of the United States on January 1, 1992. No allocations of tuna species for foreign fishing are contemplated at this time, consequently, no fees are proposed for tuna species in this foreign fishing fee schedule.

NMFS proposes to continue the waiver of the surcharge for the Fishing Vessel and Gear Damage Compensation Fund (FVGDCF), under a policy that the surcharge will not be used to continue capitalization of the FVGDCF beyond the projected duration of foreign fishing in the EEZ (see 53 FR 134, January 5, 1988). The FVGDCF is currently capitalized at a sufficient level and foreign directed fishing is projected to be minimal in 1992. The regulatory language of § 611.22(c) would be amended to remove a reference of the waiver to the year of the fee schedule. Should the situation of the FVGDCF change in 1992 or future years, NMFS will take necessary action to amend § 611.22(c) to reapply the surcharge.

NMFS also proposes a technical correction to make current the appropriate office cited in § 611.22(a) to which the fees must be submitted.

Classification

NMFS prepared a RIR for the 1988 fee schedule that discussed the economic consequences and impacts of that fee schedule and alternatives. Copies of that RIR are available (see ADDRESSES). Based on that RIR, the Assistant Administrator for Fisheries, NOAA, determined that the 1988 fee schedule complied with the requirements of section 2 of E.O. 12291. Since the proposed species fees for 1989 and 1990 were not increased, and were subsequently lowered in 1991, NMFS anticipated no new economic impacts. It has reached a similar conclusion for the 1992 schedule, particularly since the proposed 1992 Atlantic mackerel fee is the same as the final mackerel fee in 1991.

The General Counsel of the Department of Commerce has certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small domestic entities for purposes of the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*); therefore, a regulatory flexibility analysis is not required, and has not been prepared.

NOAA Directive 02–10 published at 45 FR 49312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended (43 U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements. The proposed fee schedule has no significant environmental impact on the fishery resources in the EEZ. At most, the fee schedule might affect the U.S. Atlantic mackerel harvesting strategy if operators of foreign fishing vessels did not request their annual allocations because fishing fees were too high. This is an unlikely situation, however, because the proposed fee for mackerel is identical to the fee assessed in 1991. Therefore, the proposed schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The environmental impact of harvesting this very small total allowable level of foreign fishing is described in the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries. Consequently, no environmental assessment is necessary.

This proposed rule has no information collection provisions covered by the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

This proposed rule would not directly affect the coastal zone of any state with an approved Coastal Zone Management program. Neither does the proposed rule contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: November 19, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

For the reasons stated above, 50 CFR part 611 is proposed to be amended as follows:

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.22 [Amended]

2. In § 611.22, the second sentence in paragraph (a) is amended by revising the phrase "* * * Branch Chief, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, Washington, DC 20235 * * *" to read "* * * Division Chief, Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, Silver Spring, Maryland 20910 * * *."

3. In § 611.22, paragraph (b)(1) is revised to read as follows:

§ 611.22 Fee schedule for foreign fishing.

* * * * *

(b) *Poundage fees*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1 plus the surcharge, if any, required by paragraph (c) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring	61.76
5. Mackerel, Atlantic	58.33
6. Other groundfish	119.09
7. Squid, *Illex*	103.98
8. Squid, *Loligo*	245.73
Alaska fisheries:	
21. Snails	128.42

* * * * *

§ 611.22 [Amended]

4. In § 611.22, the last sentence in paragraph (c) is amended by removing the phrase "* * * on 1991 fees." at the end of the sentence and ending the sentence with a period after the word "surcharge."

[FR Doc. 91-28253 Filed 11-26-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Notice of availability of an amendment to a fishery management plan and a minority report, and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council has submitted Amendment 4 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before January 17, 1992.

ADDRESSES: Comments should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33703. Copies of Amendment 4 with the Environmental Assessment and Regulatory Impact Review, and the minority report, may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 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, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comments in determining approvability of the document.

Amendment 4 proposes to: (1) Modify the framework procedure for establishing or modifying certain management measures to provide for receipt of NMFS stock and socioeconomic assessments prior to August each year and to require the Regional Director to notify the Council within 15 days of receipt of the Council's proposal under the framework procedure, if he decides not to accept it; (2) add almaco jack and banded rudderfish to the reef fish management unit; (3) retain scamp in the shallow-water grouper category until the quota is met and the shallow-water grouper fishery is closed, after which, scamp landings would be counted under the deep-water grouper quota for the remainder of the fishing year; (4) establish a 3-year moratorium on the acceptance of new applications for commercial vessel permits, with allowances for certain permit transfers and sales of permitted vessels (and retirement of permits not renewed); and (5) commencing with commercial permits for 1993, allow the earned income requirement to be met in either of the two years preceding the permit application.

A minority report was submitted on Amendment 4 that objects to the 3-year moratorium on the issuance of commercial vessel permits and development of a more comprehensive limited access system.

Proposed regulations to implement Amendment 4 are scheduled for publication within 15 days.

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

Dated: November 21, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–28402 Filed 11–21–91; 1:40 pm]

BILLING CODE 3510–22–M

50 CFR Parts 672 and 675

[Docket No. 911183–1283]

RIN 0648–AE46

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule that would delay the opening of the 1992 trawl fisheries in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands area (BSAI) until Steller sea lion protection measures are implemented or until the Secretary of Commerce (Secretary) publishes a notice in the **Federal Register** disapproving Amendment 25 to the Fishery Management Plan for Groundfish of the GOA and Amendment 20 to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMPs). This action is necessary to ensure adequate consideration of the effects of the groundfish trawl fisheries on the environment, particularly with respect to Steller sea lions, a species listed as threatened under the Endangered Species Act (ESA). This action is intended to further the goals and objectives contained in the GOA and BSAI FMPs and the ESA.

DATES: Comments are invited through December 4, 1991.

ADDRESSES: Comments may be sent to Dale Evans, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Biologist, NMFS, (907) 586–7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary of Commerce (Secretary) under the respective FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the foreign fishery at 50 CFR part 611 and by regulations governing the U.S. fishery at 50 CFR parts 672 and 675. Additional regulations applicable to the U.S. fishery are codified at 50 CFR part 620.

Concern over possible effects of the groundfish fisheries on the declining Steller sea lion population caused the Secretary to delay the 1991 total allowable catch (TAC) specification for GOA pollock until an environmental assessment (EA) on the TAC specification was prepared and a consultation under section 7 of the ESA was concluded. After concluding that the 1991 GOA pollock fishery was not likely to jeopardize the continued existence of Steller sea lions, NMFS published a notice in the **Federal Register** specifying a total 1991 GOA pollock TAC of 103,400 mt (56 FR 28112; June 19, 1991).

In connection with the 1991 GOA pollock TAC specification, the Secretary implemented two emergency rules to ameliorate potential, but unproven, adverse effects that groundfish trawl operations might have on Steller sea lions. These rules were effective only during the 1991 fishing year. The first of these emergency rules was implemented June 13, 1991 (56 FR 28112; June 19, 1991), extended through December 16, 1991 (56 FR 47425; September 19, 1991), and implemented the following management measures: (1) Fishing with trawl gear was prohibited in the EEZ within 10 nautical miles (nm) of 14 Steller sea lion rookeries in the GOA and BSAI to

geographically separate groundfish trawl operations from important sea lion foraging habitat; and (2) time and area constraints were specified for the management and harvest of the GOA pollock TAC to prevent adverse effects on sea lions that might result from intense fisheries in localized areas.

The second emergency interim rule was implemented October 1, 1991 (56 FR 50281; October 4, 1991), and postponed the scheduled opening of the fourth-quarter GOA pollock fishery until NMFS (1) completed an EA under the National Environmental Policy Act (NEPA) that analyzed the environmental effects of a fourth quarter pollock fishery, (2) concluded a reinitiated consultation under section 7 of the ESA, and (3) allowed adequate time for judicial review of the Secretarial measures implemented to ameliorate possible adverse effects of the fourth-quarter pollock fishery on Steller sea lions in the case of *Greenpeace USA* v. *Mosbacher*, Civ. No. 91–887(Z)C (W.D. Wash.). On October 10, 1991, the Federal District Court ruled in favor of Secretarial actions taken to alleviate any potential harm to Steller sea lions that might be related to the 1991 GOA pollock TAC, and that NMFS had not violated NEPA or ESA requirements. In response to this ruling, the fourth-quarter GOA pollock fishery was opened on October 21, 1991 (56 FR 54798; October 23, 1991).

At its September 23–29, 1991, meeting, the Council adopted Amendment 20 to the BSAI FMP and Amendment 25 to the GOA FMP that would authorize the implementation of groundfish management measures for purposes of protecting Steller sea lions. The Council's intent for these actions was to initiate rulemaking that would replace the 1991 emergency measures implemented to protect Steller sea lions. The proposed rule that would implement these amendments has been submitted for Secretarial review and was published in the **Federal Register** for public review and comment on November 18, 1991 (56 FR 58214). If approved by the Secretary after public comment, the implementation of the proposed rule would revise and expand the sea lion protection measures implemented under the June 19, 1991, emergency interim rule. Specifically, the proposed rule to implement Amendments 20 and 25 would: (1) prohibit fishing with trawl gear in the EEZ within 10 nm of 37 key Steller sea lion rookeries in the GOA and BSAI; (2) divide the GOA pollock TAC specified for the Western/Central Regulatory area into three pollock management districts; and (3) limit the amount of GOA pollock quarterly harvest allowance that might be available in any of these districts as a result of unharvested pollock from previous quarterly allowances. The 1992 groundfish fishery is scheduled to commence on January 1, 1992. However, the schedule for public review and comment on the proposed rule to implement Amendments 20 and 25 will not allow for Secretarial approval of the sea lion protection measures prior to the start of the 1992 fishing year. Therefore, NMFS proposes to delay the opening of the BSAI and GOA trawl fisheries until sea lion protection measures authorized under Amendments 20 and 25 are implemented or until the Secretary publishes a notice in the **Federal Register** disapproving Amendments 20 and 25.

The Secretarial review schedule for Amendments 20 and 25 allows for a January 20, 1992, effective date of the sea lion protection measures. The intent of NMFS is to follow the guideline review schedule so that a decision concerning the implementation of these measures is not unnecessarily delayed. NMFS further recognizes that a delay of the Bering Sea pollock fishery beyond late January could result in forgone revenue to fishermen and processors that depend on the high-valued pollock roe product. The Bering Sea pollock roe fishery normally ends by March 1, with optimum market quality roe becoming available by early February.

The proposed delay of the 1992 trawl fisheries would be consistent with a Council recommendation to NMFS to implement an emergency interim rule to delay the BSAI and GOA trawl fisheries until January 20, 1992. At its September 1991 meeting, the Council recommended a 20-day postponement of the 1992 trawl fishery to reduce the possibility of high salmon bycatch amounts that occurred during the first 2 weeks of the 1991 Bering Sea pollock fishery. In general, the recommendation for a BSAI season delay was supported by the pollock industry because pollock roe quality and recovery rates would be enhanced with a 20-day delay of the fishing season. However, concern was expressed for the potential forgone revenue if the fishery were delayed beyond this point. The Council recommended a postponement of the GOA trawl fisheries to ensure a concurrent start of the GOA and BSAI trawl fisheries and prevent an influx of BSAI vessels into the GOA prior to the start of the BSAI fishing season.

For the reasons discussed above and in the proposed rule to implement Amendments 20 and 25 (56 FR 58214; November 18, 1991), NMFS has preliminarily determined that a delay of the 1992 groundfish trawl fisheries is necessary and appropriate for the conservation and management of the groundfish fishery.

NMFS has also determined that the proposed delay of the 1992 groundfish trawl fisheries would require an extension of the January 15, 1992, control date for trawl vessel entry into the Alaska groundfish fisheries for purposes of access limitation management measures that may be considered by the Council (55 FR 36302; September 2, 1990, as corrected at 55 FR 37729; September 13, 1990). By this action, the control date for trawl vessel participation in the groundfish fisheries would be extended from January 15, 1992, to a date that is 15 calendar days after the effective date of Amendments 20 and 25.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule. Copies of the EA may be obtained from the Director, Alaska Region, NMFS (Regional Director) (see **ADDRESSES**).

On April 19, 1991, NMFS concluded formal section 7 consultation on the BSAI and GOA FMPs and fisheries. The biological opinions issued for the consultations concluded that the FMPs and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of NMFS. Adoption of the management measures described in this proposed rule will not affect listed species in a way that was not already considered in the aforementioned biological opinions. NMFS has determined that no further section 7 consultation is required for adoption of the proposed rule.

The Assistant Administrator has initially determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulatory impact review prepared for this action concludes that none of the proposed measures in this rule would cause impacts considered significant for purposes of Executive Order 12291. A copy of this review is available from the Regional Director (see **ADDRESSES**).

The IRFA prepared as part of the EA/RIR/IRFA for this action concludes that this proposed rule, if adopted, could

have significant effects on small entities. A delay of the 1992 groundfish trawl fishery for a 3-week period (i.e., until January 20, 1992) would not prevent the opportunity for the groundfish trawl fleet to harvest available groundfish TACs during the remainder of the fishing year. A 3-week delay in the pollock roe fishery may actually increase participant earnings by constraining the fishery to a time period when the quality of pollock roe and its value are highest. However, if the 1992 groundfish trawl fishery is significantly delayed beyond January 20, 1991, vessel operators may forego an opportunity to harvest pollock during the period of optimum roe quality. Depending upon the extent of the delay of the 1992 season, reductions in annual gross earnings could exceed 5 percent of the annual gross earnings of vessels participating in the pollock fishery. In 1991, the total estimated first wholesale value of BSAI pollock harvested through February was over $289 million.

This proposed rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

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

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: November 20, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1802 *et seq.*

2. In § 672.23, paragraph (d) is added to read as follows:

§ 672.23 Seasons.

* * * * *

(d) Notwithstanding any other provision of this part, directed fishing for groundfish with trawl gear in the Gulf of Alaska is prohibited from 00:01 a.m. Alaska local time, January 1, 1992, until the date upon which final rules implementing Amendment 25 to the Fishery Management Plan for Groundfish of the Gulf of Alaska are made effective or until the Secretary publishes a notice in the **Federal Register** disapproving Amendment 25.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 6 U.S.C. 1801 *et seq.*

4. In § 675.23, paragraph (d) is added to read as follows:

§ 675.23 Seasons.

* * * * *

(d) Notwithstanding any other provision of this part, directed fishing for groundfish with trawl gear in the Bering Sea and Aleutian Islands area is prohibited from 00:01 a.m. Alaska local time, January 1, 1992, until the date upon which final rules implementing Amendment 20 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands are made effective or until the Secretary publishes a notice in the **Federal Register** disapproving Amendment 20.

[FR Doc. 91-28301 Filed 11-20-91; 3:24 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 228
Tuesday, November 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-163]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test a Genetically Engineered Organism

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and a finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of a genetically engineered organism. The assessment provides a basis for the conclusion that the field testing of the genetically engineered organism will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection 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: Ms. Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit number listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the organism under the conditions described in the permit application. APHIS concluded that the issuance of the permit listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which is based on data submitted by the applicant as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field test.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of the following permit to allow the field testing of genetically engineered organism:

Permit No.	Permittee	Date issued	Organism	Field test location
91-205-01	Calgene, Incorporated	10-22-91	Rapeseed plants genetically engineered to express an oil modification gene.	Yolo ad Imperial Counties, California.

The environmental assessment and finding of no significant impact has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

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

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-28380 Filed 11-25-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Tippets Valley Timber Sale, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Extension of comment period for the North Slope Timber Sale DEIS.

SUMMARY: Due to an October 28, 1991 correction/addendum to the North Slope Timber Sale DEIS, I have extended the

review and comment period to December 31, 1991.

The Notice of Availability of a Draft Environmental Impact Statement (EIS No. 910377), published by the Environmental Protection Agency in the **Federal Register** of October 25, 1991 (56 FR 55306) is hereby amended.

For further information contact: Marvin R. Turner, District Ranger, Teasdale Ranger District, P.O. Box 99, Teasdale, Utah 84773–0099, telephone (801) 425–3702.

Dated: November 15, 1991.

Hugh C. Thompson,

Forest Supervisor.

[FR Doc. 91–28317 Filed 11–25–91; 8:45 am]

BILLING CODE 3401–11–M

Hay Timber Sale, Lincoln National Forest, Otero County, NM

November 15, 1991.

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest timber and build roads in the Hay Planning Area.

DATES: Written comments concerning the scope of the analysis will be accepted from now until December 15, 1991. A formal public involvement plan is currently being developed. Future news releases and letters to interested parties will further detail how and when to get involved in the analysis process.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis must be sent to Max E. Goodwin, Cloudcroft District Ranger, P.O. Box 288, Cloudcroft, NM 88317.

FOR FURTHER INFORMATION CONTACT: Questions about the analysis, documentation, and public involvement process should be directed to Tim Meyer, Cloudcroft District Timber Presale Forester, 505–682–2551, or Ron Hannan, Lincoln National Forest Planning Staff (505) 437–6030.

SUPPLEMENTARY INFORMATION: The proposed action is to harvest approximately 2.2 million board feet (MMBF) of timber from 700 acres within a 6,475 acre planning area. Approximately 15.5 miles of road may be constructed or reconstructed. The decision to be made will include: Whether or not to harvest timber and construct roads; if timber is harvested and roads are constructed, how much and where will it happen; and what mitigation measures are needed, if any. The Lincoln National Forest Land and Resource Management Plan (LRMP) was implemented in September, 1986. One of the management decisions in the LRMP was to implement a timber sale program. The Hay Timber Sale is identified in Table 10 of the LRMP and was scheduled for implementation in 1991. Scoping for this proposal began in April, 1990. To date, the opportunity for informal public participation had included notices posted in local post offices and local newspapers, an open house on June 7, 1990, two letters sent to the project mailing list (including adjacent landowners), and a field trip on August 6, 1990, with invitations to 220 individuals who have an interest in the timber program. Scoping has identified several issues, including: How to manage old growth; how to balance the management of wildlife habitat, particularly for Mexican spotted owl and Northern goshawk, with other timber management objectives; how to protect and enhance habitat for a threatened plant, *Cirsium vinaceum*; and an opportunity to accomplish road reconstruction identified in the LRMP.

Upon reviewing the issues, Lincoln National Forest Supervisor decided to prepare an Environmental Impact Statement.

The range of alternatives that will be considered include no action, treatments that will vary timber harvest volumes from 0.6 MMBF to 3.3 MMBF, and varying lengths of new road construction, ranging from 7.8 miles to 23 miles.

Federal, State, and local agencies; private industry; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the ongoing scoping process.

The time frame will allow for identifying any additional issues and analyzing them. Scoping will include:

1. Identifying all potential issues.
2. Identifying those issues to be analyzed in depth.
3. Identifying issues that can be handled administratively or those which have been covered by a previous environmental document.

Lee Poague, Forest Supervisor, Lincoln National Forest, 11th & New York, Alamogordo, NM 88310, is the responsible official.

The analysis is expected to take about 2 months. The draft environmental impact statement should be available for public review by 12/31/91. The final environmental impact statement is scheduled to be completed by 03/92.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

Based on several court rulings related to public participation on the environmental review process, the Forest Service believes it is important to give reviewers notice at this early stage. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. supp. 1331, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: November 4, 1991

Lee Poague,

Forest Supervisor.

[FR Doc. 91–28318 Filed 11–25–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Economic/Agriculture Censuses of Outlying Areas.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 54,591 hours.

Number of Respondents: 115,825.

Avg Hours Per Response: 28 minutes.

Needs and Uses: The Bureau of the Census conducts the economic and agricultural censuses of outlying areas every 5 years to provide detailed benchmark data for the economic and agricultural sectors of the economies of the outlying areas which includes Puerto Rico, Guam, the Virgin Islands, and the Commonwealth of the Northern Marianas Islands. The censuses of outlying areas provide the only source for dependable, comparable data at a geographic level consistent with U.S. counties. The economic censuses will provide data on wholesale and retail trade establishments, manufacturing, construction, and selected service industries. The agriculture census will provide data on the number and type of farms, land use, crop acreage and production, livestock inventory and sales, production expenses, farm related income, and other characteristics. Local and Federal governments use data gathered in the censuses to evaluate economic and agriculture programs, disburse Federal funds, and determine the extent of damages in times of disaster. Businesses, industries, and other groups use census data to make investment decisions, forecast economic conditions, measure potential markets, analyze market trends and measure performance within geographic areas.

Affected Public: Farms, Businesses or other for-profit.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated:

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–28404 Filed 11–25–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census of Construction Industries.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 306,500 hours.

Number of Respondents: 151,000.

Avg Hours Per Response: 2 hours.

Needs and Uses: The Census of Construction Industries is conducted every five years covering years ending in 2 or 7, as part of the Economic Censuses. The report forms to conduct this census will be sent to establishments which have construction activity as their primary type of business. Among the important statistics produced by this census are estimates of the value of construction work done and estimates of value of construction work put in place. These data will be used by the Federal Government as an important part of the framework for the national accounts, input-output measures, key economic indexes, and other composite measures of economic activity.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated:

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–28405 Filed 11–25–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Sheets, Pillowcases, and Towels.

Form Number(s): MQ23X.

Agency Approval Number: 0607–0650.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 120 hours.

Number of Respondents: 40.

Avg Hours Per Response: 0.75.

Needs and Uses: This survey collects data on the production, quantity, value of shipments, inventories, and unfilled sales orders of sheets, pillowcases, and towels. The form requests only data needed by the Office of Textiles and Apparel to monitor several textile categories in multifiber agreements. These data have been used to support specific concerns in these categories at least 16 times over the past 4 years and currently support specific limits of 115 million square yards equivalent to trade valued at $116 million. The business community and various government agencies use the data to make decisions, develop policy, assess industry and economic trends, measure import penetration, and plan production.

Affected Public: Businesses or other for–profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated:
Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 91-28406 Filed 11-25-91; 8:45 am]
BILLING CODE 3510-07-F

National Institute of Standards and Technology

[Docket No. 910934-1234]
RIN 0693-AA93

Proposed Revision of Federal Information Processing Standard (FIPS) 128, Computer Graphics Metafile (CGM)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A revision to Federal Information Processing Standard (FIPS) 128, Computer Graphics Metafile (CGM), is being proposed. This revision modifies the standard in two ways. First, this revision adopts the redesignated version of the CGM standard, which is a joint ANSI and ISO standard, ANSI/ISO 8632.1-4:1991. Originally, FIPS 128 adopted just the ANSI standard. The ANSI and ISO documents differed only in style and layout, not content.

Second, this revision modifies FIPS 128 by adding a requirement for the use of CGM profiles. A profile of CGM defines the options, elements, and parameters of ANSI/ISO 8632 necessary to accomplish a particular function and to maximize the probability of interchange between systems implementing the profile.

In particular, this revision to FIPS 128 adopts the first such profile as a requirement, namely the military specification MIL-D-28003, December 1988, more commonly known as the CALS (Computer-aided Acquisition and Logistics Support) CGM Application Profile. While developed specifically for the Department of Defense, this profile is applicable for use by other Federal agencies as well as when the representation of graphics information in digital form is to be used in technical illustrations and/or technical publications.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. The specifications section has two parts: (a) ANSI/ISO 8632.1-4:1991, Computer Graphics Metafile, defining the scope of the specifications, the syntax and semantics of the CGM elements and requirements for a conforming implementation; and (b) MIL-D-28003, defining the first Application Profile of FIPS 128.

Only the announcement section of the standard is provided in this notice. Interested paties may obtain copies of ANSI/ISO 8632.1-4:1991 from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642-4900. Copies of MIL-D-28003 may be obtained from the Naval Publications and Forms Center, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, (215) 697-3321.

DATES: Comments on this proposed revision must be received on or before February 24, 1992.

ADDRESSES: Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Revision of FIPS 128, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel R. Benigni, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3266.

Dated: November 19, 1991.
John W. Lyons,
Director.

Federal Information Processing Standards Publication 128-1

Announcing the Standard for Computer Graphics Metafile (CGM)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administration Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Computer Graphics Metafile (CGM) (FIPS PUB 128-1).

2. *Category of Standard.* Software Standard, Graphics.

3. *Explanation.* This publication is a revision of FIPS PUB 128. This revision supersedes FIPS PUB 128 and modifies the standard by:

(1) Adopting the redesignated version of the CGM standard, known as ANSI/ISO 8632.1-4:1991;

(2) Adding a requirement for the use of profiles. A profile defines the options, elements, and parameters of ANSI/ISO 8632 necessary to accomplish a particular function and to maximize the probability of interchange between systems implementing the profile; and

(3) Adopting the first such profile as a requirement, namely the military specification MIL-D-28003, December 1988, more commonly known as the CALS (Computer-aided Acquisition and Logistics Support) CGM Application Profile.

This publication announces adoption of American National Standards Institute/International Organization for Standardization (ANSI/ISO) Computer Graphics Metafile (CGM), ANSI/ISO 8632.1-4:1991 which consists of two parts identified in the Specifications section, as a Federal Information Processing Standard (FIPS). ANSI/ISO 8632 is a graphics data interface standard which specifies a file format suitable for the description, storage, and communication of graphical (pictorial) information in a device independent manner. The purpose of the standard is to facilitate the transfer of graphical information between different graphical software systems, different graphical devices, and different computer graphics installations. However, ANSI/ISO 8632 is not completely specified, nor do all implementations contain all possible options, elements, and parameters. The purpose of the MIL-D-28003 CGM profile is to enable its users to ensure predictable interchange results and interworking of machines, sites, and applications by rigorously defining and adhering to the same subset of ANSI/ISO 8632. Since a proliferation of CGM profiles is not desirable, only those future profiles deemed necessary to satisfy Federal user requirements not met by MIL-D-28003 will be added by revision to this standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of

Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. *Cross Index.*

a. American National Standard/ International Organization for Standardization (ANSI/ISO) Computer Graphics Metafile (CGM), ANSI/ISO 8632.1–4:1991.

b. Military Specification, Digital Representation of Illustration Data: CGM Application Profile, MIL–D–28003, December 1988.

7. *Related Documents.*

a. Federal Information Processing Standards Publication (FIPS PUB) 120–1, Graphical Kernel System (GKS).

b. Federal Information Resources Management Regulation 201–39, Acquisition of Federal Information Processing Resources by Contracting.

c. American National Standard Graphical Kernel System, GKS, ANSI X3.124.1–3–1985.

d. ISO 646–1983, Information Processing—7-Bit Coded Character Set for Information Interchange.

e. ISO 2022–1986, Information Processing—ISO 7-Bit and 8-Bit Coded Character Sets—Code Extension Techniques.

f. ISO 2375–1987, Data Processing—Procedure for Registration of Escape Sequences.

g. ISO 7942–1985, Information Processing Systems—Computer Graphics—Graphical Kernel System (GKS).

h. ISO 6429–1988, Information Processing—Control Functions for 7-Bit and 8-Bit Coded Character Sets.

i. ANSI/ISO 8632.1–4:1991, Information Processing Systems—Computer Graphics Metafile (Part 1: Functional Specifications; Part 2: Character Encoding; Part 3: Binary Encoding; Part 4: Clear Text Encoding).

8. *Objectives.* The primary objectives of this standard are:

—To allow the portability of graphics data among different graphics installations and devices. This encourages a uniform interface for noninteractive picture description.

—To promote the exchange of graphic information enabling installations to share data and reduce time spent recomputing in efforts to regenerate graphics data.

—To promote the use of a standard set of elements using standard terminology, which aids graphics programmers in using graphics methods.

9. *Applicability.*

a. This standard is for use in computer graphics applications that are either developed or acquired for government use. Although not developed specifically for the Printing/Graphics Arts industry, this standard may be used in printing and graphics art applications whenever desirable.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—A graphics metafile is maintained at a central facility for a decentralized system that employs graphics devices of different makes and models that must utilize the data.

—A graphics metafile is required to preserve picture data when conversion or migration from one graphics system to another is necessary and the two systems are not necessarily compatible.

—A graphics metafile is intended for information interchange between a source system and a target system that are not necessarily compatible.

c. Nonstandard features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of graphics picture data and future conversion more difficult and costly.

d. The use of profiles is strongly recommended in applications where it is vitally important to ensure predictable results between machines, sites and applications. They are defined by application constituencies who agree to adhere to the same subset of CGM. The first profile added herein by this revision is recommended for Department of Defense applications as well as other Federal government applications when the representation of graphics information in digital form is for use in technical illustrations and/or technical publications. In addition, this profile is recommended for satisfying Federal agencies' specifications when the use of a general-purpose, graphical interchange mechanism is required.

10. *Specifications.* ANSI/ISO 8632.1–4:1991, Computer Graphics Metafile, defines the scope of the specifications, the syntax and semantics of the CGM elements and requirements for a conforming implementation. The ANSI/ISO 8632 consists of four parts: (Part 1: Functional Specifications; Part 2: Character and Coding; Part 3: Binding and Coding; Part 4: Clear Text Encoding). In addition, MIL–D–28003, the Military Specification for the Digital Representation of Illustration Data: CGM Application Profile, establishes the requirements to be met when two-dimensional picture description or illustration data that is vector or mixed vector and raster is delivered in the digital format of FIPS PUB 128–1.

11. *Implementation.* The implementation of this standard involves two areas of consideration: acquisition of CGM implementations and interpretations of the standard.

11.1 *Acquisition of CGM Implementations.* This revised standard becomes effective six (6) months after the publication in the **Federal Register** announcing approval of the revised standard by the Secretary of Commerce. The use of the Application Profile added as a result of this revision has a delayed effective date of twelve (12) months after the publication in the **Federal Register** announcing approval of the revised standard by the Secretary of Commerce.

11.2 *Interpretation of FIPS CGM.* Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director; Computer Systems Laboratory; ATTN: CGM Interpretation; National Institute of Standards and Technology; Gaithersburg, MD 20899.

12. *Waivers.*

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent

promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 128–1 (FIPSPUB128–1), and title. Specify microfiche, if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 91–28302 Filed 11–25–91; 8:45 am]
BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagic Review Board (Board) will hold a public meeting on December 4, 1991, beginning at 1 p.m. The meeting will be held in the conference room of the Hyperbaric Treatment Center, 42 Ahui Street, Honolulu, Hawaii.

The Board's meeting agenda is a follows: (1) Review economic hardship information submitted by longline fishermen; (2) provide input on exemption applications and other permit applications, as needed; (3) discuss possible modifications to criteria on which exemptions to longline area closure regulations are based; (4) discuss other potential modifications to area closure regulations; and (5) discuss other business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96812; telephone: 808–523–1368.

Dated: November 20, 1991.

Richard H. Schaefer, *Director,*
Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–28396 Filed 11–25–91; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 20, 1991.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 27, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 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 669–P, the United States Government has decided to control imports in this category for the prorated period beginning on October 29, 1991 and extending through December 31, 1991.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 41831, published on August 23, 1991.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 20, 1991.

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

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), 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 Silk Blend 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 November 27, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 669–P [1], produced or manufactured in the Philippines and exported during the period beginning on October 29, 1991 and extending through December 31, 1991, in excess of 343,152 kilograms [2].

Textile products in Category 669–P 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 this category limit for the period July 31, 1991 through October 28, 1991, shall be charged against that 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.

For the import period July 31, 1991 through August 25, 1991, there are no charges to be made to the restraint limit established for Category 669–P in the directive dated August 19, 1991.

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.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] The limit has not been adjusted to account for any imports exported after October 28, 1991.

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. 91-28277 Filed 11-25-91; 8:45 am]

BILLING CODE 3510-DR-F

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, Contract Clause, and Applicable OMB Control Number: DoD FAR Supplement, Part 252.215-7004; recoupment of nonrecurring costs.

Type of Request: New collection.

Average Burden Hours/Minutes per Response: 2 hours.

Responses per Respondent: 8.6.

Number of Respondents: 80.

Annual Burden Hours: 1536.

Annual Responses: 688.

Needs and Uses: Defense FAR Supplement part 215 and the clause at 252.215.7004 prescribe DoD policy and procedure for the recoupment of the Government's investment in the nonrecurring costs of major defense equipment, major items, and related technology, when the contractor or subcontractor sells or transfers the equipment or technology to a customer other than the U.S. Government.

Affected Public: Businesses or other for-profit, Small Businesses or organizations, and non-profit institutions.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss 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 requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: November 20, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-28303 Filed 11-25-91; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Jackson Metropolitan Area, Mississippi, Feasibility Study

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

SUMMARY: The proposed action is to evaluate a comprehensive flood protection plan for existing developments in the vicinities of Jackson, Pearl, Richland, Flowood, and Byram, Mississippi.

FOR FURTHER INFORMATION CONTACT: Bob Barry (601) 631-7134, CELMK-PD-Q, 3515 I-20 Frontage Road, Vicksburg, Mississippi 39180-5191.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The proposed action would provide flood damage protection to urban properties, businesses, and residences.

2. Alternatives

Alternatives to be evaluated include no action, various levee plans, pumping and drainage facilities in conjunction with levees, various clearing plans, and nonstructural measures.

3.

a. A scoping meeting will be held in Jackson, Mississippi, during 1992. Public notices to be published later will inform the general public on location, time, and date.

b. Significant issues include bottomland hardwoods, wetlands, endangered species, waterfowl, fish, water quality, cultural resources, socioeconomic conditions, etc. additional environmental review and consultation requirements could be identified during the scoping process.

c. The following will be invited to participate as cooperating agencies: The Environmental Protection Agency, U.S. Fish and Wildlife Service, Soil Conservation Service, Mississippi Department of Environmental Quality, and the Mississippi Department of Wildlife, Fisheries, and Parks.

4.

The Feasibility Report, including the DEIS, will be available for review by the general public in March 1995.

Kenneth L. Denton,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-28348 Filed 11-25-91; 8:45 am]

BILLING CODE 3710-PU-M

Department of the Navy

Naval History Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Secretary of the Navy's Advisory Committee on Naval History will meet on February 6, 1992, at 8:30 a.m. in the Dudley Knox Center for Naval History Conference Room, second floor, Building 57, Washington Navy Yard, Washington, DC. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Committee in February 1991 and to make comments and recommendations on these activities to the Secretary of the Navy.

For further information concerning this meeting, write to the Director of Naval History, Washington Navy Yard, Washington, DC 20374, or telephone Dr. William S. Dudley, Senior Historian, at 202-433-2364.

Dated: November 14, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-28351 Filed 11-25-91; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Notice of Request for Fiscal Year (FY) 1991 Data and Information Under the Bilingual Education: State Educational Agency Program

AGENCY: Department of Education.

PROGRAMMATIC INFORMATION: The State Educational Agency (SEA) Program provides financial assistance to SEAs to collect, aggregate, analyze, and publish data and information on limited English proficient (LEP) persons in their States and the educational services provided or available to those persons. Authority for this program is found in section 7032 of

the Bilingual Education Act (20 U.S.C. 3302).

DATE FOR SUBMITTING DATA AND INFORMATION: SEA program regulations in 34 CFR 548.10(b) require grantees under this program to report the data and information specified in 34 CFR 548.10(c) to the Secretary. Reports containing the data and information for FY 1991 must be submitted on or before January 31, 1992. An explanation must be provided in the report if the statewide count of LEP persons for FY 1991 varies by 10 percent or more from the statewide count for FY 1990.

ADDRESSES: Reports should be addressed to Luis A. Catarineau, U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau. Telephone: (202) 732–5707. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Authority: 20 U.S.C. 3302.

Dated: October 30, 1991.

Nguyen Ngoc-Bich,

Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 91–28338 Filed 11–25–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2853–020 Montana]

Montana Department of Natural Resources and Conservation; Notice of Availability of Environmental Assessment

November 20, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application requesting approval of a fisheries mitigation plan in Confederate Gulch. The project is located in Broadwater County, Montana. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the fisheries mitigation plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–28320 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2853–019 Montana]

Montana Department of Natural Resources and Conservation; Notice of Availability of Environmental Assessment

November 20, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to amend the license for the Broadwater Dam Project to construct a siphon and appurtenant features near the Montana Ditch at Deep Creek in Broadwater County. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois C. Cashell,

Secretary.

[FR Doc. 91–28321 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ90–3–32–004 and RP90–126–004]

Colorado Interstate Gas Co.; Compliance Filing

(November 20, 1991)

Take notice that on November 8, 1991, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets in compliance with the Commission's order issued October 24, 1991 in Docket Nos. TQ90–1–32 and RP90–126:

Second Substitute Seventh Revised Sheet No. 59
Second Substitute Fifth Revised Sheet No. 60
Substitute Sixth Revised Sheet No. 60.A
Second Substitute Fifth Revised Sheet No. 61B

Sheet Nos. 61A and 61B revise the calculation of the D–1 and D–2 current adjustment so as to provide consistency as between CIG's D–1 and D–2 calculations and the industry. CIG notes that the Commission has determined there is no material rate impact on CIG's rates with this tariff change. In addition, Sheet Nos. 59 and 60 eliminate the word "production" consistent with the October 24 order.

CIG requests that these proposed tariff sheets be made effective on July 1, 1990.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

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 November 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91–28325 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–1–32–000]

Colorado Interstate Gas Co. GRI Filing

November 20, 1991.

Take notice that on November 15, 1991, Colorado Interstate Gas Company ("CIG") submitted for filing an original and six copies of affected tariff sheets from Original Volume No. 1, Original Volume No. 2, and Original Volume No. 3 of its FERC Gas Tariff, reflecting a 0.05 cent/Mcf increase in the presently effective Gas Research Institute ("GRI") rate from 1.46 cent/Mcf to 1.51 cent/Mcf effective January 1, 1992.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection

at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-28328 Filed 11-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-44-022]

El Paso Natural Gas Co.; Compliance Filing

November 20, 1991.

Take notice that on November 14, 1991, El Paso Natural Gas Company ("El Paso") filed pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations under the Natural Gas Act and in compliance with ordering paragraph (A) of the Commission's "Order Accepting Tariff Sheets Subject to Conditions, Establishing Technical Conference, and Establishing Complaint Proceedings" issued October 30, 1991 at Docket Nos. RP88-44-019 and RP91-232-000, certain revised tariff provisions, together with narrative explanations or other clarification of certain issues, as required by said order.

El Paso states that on August 30, 1991, at Docket No. RP88-44-000, *et al.*, El Paso filed certain tariff sheets in compliance with its "Stipulation and Agreement in Settlement of Rate and Related Proceedings" ("Settlement") approved by orders issued March 20, 1991 and August 14, 1991 in said proceeding. By order issued October 30, 1991, the Commission accepted such tariff sheets effective on various dates as set forth in said filing, subject to El Paso filing revised tariff sheets incorporating certain modifications within 15 days of the date of the order and subject to certain other conditions. Accordingly, in compliance with the October 30, 1991 order, El Paso tendered the instant filing.

El Paso further states that it will file a request for rehearing of the Commission's October 30, 1991 order, wherein El Paso will take issue with certain of the tariff provision changes ordered by the Commission or clarifications made by the Commission. Notwithstanding such rehearing request, El Paso has reflected on the tendered tariff sheets those modifications required by the Commission. El Paso will modify further, if necessary, those certain tariff provisions contained therein based upon the outcome of El Paso's request for rehearing.

Inasmuch as the filing was submitted in compliance with the Commission's order, El Paso respectfully requested waiver of the Commission's Regulations, as appropriate, in order that certain of the tendered tariff sheets be accepted by the Commission and permitted to become effective September 1, 1991, the effective date of the sheets being modified. El Paso requested that certain other tariff sheets be made effective on the dates indicated thereon which dates have previously been approved by the Commission.

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 November 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91-28329 Filed 11-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-148-002]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

November 20, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on November 13, 1991 tendered for filing Sub 2/ Thirty-Ninth Revised 57(i) to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1991.

Great Lakes states that this tariff sheet was inadvertently omitted from its filing on October 30, 1991 at Docket No. RP91-148-001 which was filed to amend a previously filed, and accepted, tariff filing to reflect the appropriate rates and tariff sheet pagination since the filing of Great Lakes' RP90-20 settlement rates on October 23, 1991, to be effective May 1, 1990.

Great Lakes states that copies of the filing were served on all of Great Lakes' customers and the Public Service Commissions of Minnesota, Michigan and Wisconsin.

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 Procedures, 18 CFR 385.211. All such protests should be filed on or before November 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91-28331 Filed 11-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-28-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

November 20, 1991.

Take notice that on November 15, 1991, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), P.O. Box 3102, Tulsa, Oklahoma 74101, tendered for filing in Docket No. RP92-28-000 Twenty-Ninth Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-Ninth Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Northwest Alaskan's four U.S. purchasers: Northern Natural Gas Company ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle"), Pan-Alberta Gas (U.S.) Inc. ("Pan-Alberta (U.S.)"), and Pacific Interstate Transmission Company ("PIT") under Rate Schedules X-1, X-2, X-3, and X-4, respectively.

Northwest Alaskan states that it is submitting Twenty-Ninth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, Pan-Alberta (U.S.), and PIT,

and pursuant to Rate Schedules X–1, X–2, X–3, and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1992 through June 30, 1992) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-Ninth Revised Sheet No. 5 become effective January 1, 1992.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before November 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–28330 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–119–005]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 20, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 15, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Revised Sheet No. 223
Second Revised Sheet No. 224
Second Revised Sheet No. 225
Fifth Revised Sheet No. 439
Second Revised Sheet No. 771

Texas Eastern states that on April 10, 1991, the Commission issued an order in Docket Nos. RP91–119 and RP90–119 which approved Texas Eastern's March 15, 1991 filing subject to certain revisions. Texas Eastern filed tariff sheets on May 9, 1991 in compliance with the April 10, 1991 order. In a letter order issued November 1, 1991 in Docket No. RP91–119–001, the Commission accepted certain tariff sheets filed on May 9, 1991 subject to Texas Eastern filing tariff language addressing specific matters discussed in the November 1, 1991 letter order. Sheet Nos. 223 and 771 are being filed herewith in compliance with that order.

Texas Eastern also states that on October 31, 1991 Texas Eastern filed tariff sheets in compliance with the Commission's October 1, 1991 Order on Rehearing and Clarification in Docket Nos. RP91–119–001 and RP90–119–008. The October 31, 1991 filing provided for a three-part rate for Rate Schedule ISS–1 and provided Texas Eastern the right to deny a request for ISS–1 service where the customer fails to show that it has adequate access to transportation capacity to remove gas from storage in the event of interruption of service. Sheet Nos. 224, 225, and 439 are being submitted herewith to reflect those provisions in compliance with the October 1, 1991 order.

The proposed effective date of these tariff sheets is April 16, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern also states that copies of the filing have also been mailed to all parties in Docket No. RP91–119 and to all parties on the restricted service list in Docket Nos. RP88–67, *et al.*, (Phase I).

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 Procedures, 18 CFR 385.211. All such protests should be filed on or before November 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91–28237 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–94–011]

Trailblazer Pipeline Co.; Notice of Tariff Filing in Compliance With Commission Order

November 20, 1991.

Take notice that on October 11, 1991, Trailblazer Pipeline Company (Trailblazer) tendered for filing Second Substitute Original Sheet No. 32 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective June 1, 1991.

Trailblazer states that the purpose of this filing is to comply with the Commission's letter order issued September 26, 1991 at Docket No. RP84–94–009. Trailblazer submitted revised language to provide for twenty-four hour notice to interruptible customers prior to their being curtailed.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective June 1, 1991.

Trailblazer states that copies of the filing served on Trailblazer's jurisdictional customers and interested state regulatory agencies and all parties set out on the official service list at Docket No. RP84–94.

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 Procedures, 18 CFR 385.211. All such protests should be filed on or before November 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91–28322 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–8–001 and TM92–2–42–001]

Transwestern Pipeline Co.; Compliance Filing

November 20, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on November 14, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective November 2, 1991:

Substitute 90th Revised Sheet No. 5
Substitute Original Sheet No. 5D(v)
Substitute 2nd Revised Sheet No. 5E(iii)
Substitute 53rd Revised Sheet No. 6
Substitute 16th Revised Sheet No. 37
Substitute 10th Revised Sheet No. 89
Substitute Original Sheet No. 89A
Substitute 10th Revised Sheet No. 90

Effective December 1, 1991:

Substitute 91st Revised Sheet No. 5
Substitute 54th Revised Sheet No. 6
Substitute 17th Revised Sheet No. 37

Transwestern states that the November 2, 1991 tariff sheets are being filed to comply with the Commission's Order issued November 1, 1991 ("Order") in Docket Nos. RP92–8–000, *et al.* The Order approved, effective November 2, 1991, Transwestern's October 2, 1991 filing which requested recovery of an additional $863,442 in take-or-pay, buyout, buydown and contract reformation settlement costs.

Ordering Paragraph (A) of the Commission's Order required Transwestern to refile revised tariff sheets within fifteen (15) days to remove the carrying charges that relate to the period from October 2, 1991 through November 1, 1991. Pursuant to and in compliance with Ordering Paragraph (A) of the Commission's Order, Transwestern states, it submitted the filing.

Transwestern states that copies of the filing were served upon all of Transwestern's gas utility customers and interested state commission.

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 Procedures, 18 CFR 385.211. All such protests should be filed on or before November 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91–28326 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–520–002]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1991.

Take notice that Trunkline Gas Company (Trunkline) on October 21, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet No. 3538
Second Revised Sheet No. 3544
First Revised Sheet No. 3545
Second Revised Sheet No. 3549
Second Revised Sheet No. 3550
Second Revised Fourth Sub Fifth Revised Sheet No. 3589
Third Revised Fourth Sub Fifth Revised Sheet No. 3589
Revised Eighth Revised Sheet No. 3589
Revised Second Sub Seventh Revised Sheet No. 3589
Revised Ninth Revised Sheet No. 3589
Revised Tenth Revised Sheet No. 3589

The subject tariff sheets bear an issue date of October 21, 1991, and proposed effective dates of December 3, 1988 and subsequent dates as shown on the tariff sheets.

Trunkline states that these revised tariff sheets are being filed in compliance with the Commission's Order dated December 2, 1983 in the above-referenced proceeding. Specifically, the revised tariff sheets reflect that Northern Natural Gas Company (Northern) exercised its option to reduce agreement demand levels under Trunkline's Rate Schedule T–81. Northern has a service agreement dated October 22, 1981 as amended on June 18, 1982 and December 3, 1988 with Trunkline and Panhandle Eastern Pipe Line Company. Northern exercised its option under the agreement to reduce the daily agreement demand level from 15,000 to 7,500 Mcf effective December 3, 1988. The Transportation and Sales Agreement with the option to reduce the daily agreement demand level at the end of five contract years was authorized in Docket No. CP82–520–000.

A copy of this filing is being served on Northern and Panhandle Eastern Pipe Line Company.

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. All such motions or protests should be filed on or before November 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Trunkline's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–28323 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–2–76–000]

Wyoming Interstate Company, Ltd.; Notice of GRI Filing

November 20, 1991.

Take notice that on November 15, 1991, Wyoming Interstate Company, Ltd. ("WIC") submitted for filing an original and six copies of affected tariff sheets from First Revised Volume No. 2 of its FERC Gas Tariff, reflecting a 0.05 cent/Mcf increase in the presently effective Gas Research Institute ("GRI") rate from 1.46 cent/Mcf to 1.51 cent/Mcf effective January 1, 1992.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or 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 and 214). All such petitions or protests should be filed on or before November 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons 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. 91–28324 Filed 11–25–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–96–NG]

Alenco Resources Inc.; Application To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy; Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on November 4, 1991, of an application filed by Alenco Resources Inc. (Alenco) requesting blanket authorization to import up to 54 Bcf and export up to 54 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period beginning with the date of first import or export after December 31, 1991. Alenco intends to use existing pipeline and related facilities for the importation and exportation of gas supplies, and states that it will advise DOE of the first import or export and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to

intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, December 26, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 100 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Alenco, a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, is a wholly owned subsidiary of Alenco Inc., which is a wholly owned subsidiary of Alberta Energy Company Ltd. Alenco has an existing blanket import and export authorization, issued on August 31, 1988, in DOE Opinion and Order No. 268 (1 ERA, 70,808), which expires on December 31, 1991. Alenco is requesting that the applied for authorization be granted no later than the expiration date of its current authorization.

Alenco requests authorization to import and export natural gas, including LNG, on a short-term or spot-market basis for its own account, as well as for the accounts of others for which Alenco may agree to act as agent. Alenco is interested in importing and exporting natural gas from and to Canada, Mexico, and other countries. The proposed imports would be sold on a short-term basis to U.S. pipelines, distribution companies, and commercial and industrial end-users. The proposed export authorization would enable Alenco to make natural gas available on a short-term or spot-market basis to various purchasers. The specific pricing terms of each import and export arrangement would be determined by competitive factors in the markets served through arms-length negotiations between Alenco and its suppliers.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested import/export authorization. The applicant asserts that this import/export arrangement will be competitive and therefore in the public interest and that there is no current need for the domestic gas proposed to be exported. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above. It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Alenco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on November 19, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–28407 Filed 11–25–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4034–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to

the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration

Title: Conflict of Interest (COI) in EPAAR (EPA Acquisition Regulation) (EPA No. 1550.02; OMB Comment No. 2030–0023). This ICR is in support of the information collection requirements for the final rule entitled "Acquisition Regulation Concerning Conflicts of Interest."

Abstract: Federal Acquisition Regulation (FAR) 48 CFR subpart 9.5 (as amended by Federal Acquisition Circular (FAC) 90–1, October 22, 1990) limits the award of contracts when COI exists, unless an agency head or designee determines such a contract may be in the Government's best interest. Recent studies by the General Accounting Office (GAO) and Congressional Committees have concluded that EPA's existing COI procedures are inadequate to protect its Superfund program. In response to these conclusions, the EPA is using its authority under 48 CFR subpart 1.3 to implement additional COI regulation for the Superfund program. The information collected under this regulation will be used by EPA contract officers to: (1) Prevent, mitigate, and neutralize actual or potential COI; (2) ensure the integrity of contractors throughout contract performance; and (3) avoid jeopardizing cost recovery and enforcement actions.

This ICR, if approved, will require that contractors involved in Superfund: (1) Notify EPA of actual or potential work-assignment-related conflicts of interest; (2) submit either annual or work-assignment-related certifications concerning disclosures of COI; (3) develop and submit to EPA a COI plan describing the method used by their organization to identify, prevent, and mitigate COI; (4) submit to EPA any updates to the COI plan; (5) seek authorization from EPA to contract for future work that poses a high risk of COI because of previous work performed for EPA. These contractors will also be required to store and maintain all records necessary to identify COI, to include: (1) A database of potential corporate clients and contracts; and (2) disclosure records of conflicts that have been identified.

Burden Statement: Public reporting burden for this collection of information is estimated to average 16 hours per response, including reviewing instructions, searching existing information sources, and completing and reviewing the collection of information. Public recordkeeping burden is estimated at 449 hours per recordkeeper, annually.

Respondents: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations.

Estimated number of respondents: 150.

Estimated number of responses per respondent: 68.

Estimated total annual burden on respondents: 227,700 hours.

Frequency of collection: Annual or on a work assignment basis.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: November 20, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–28384 Filed 11–25–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4035–1]

Transfer of Data to Contractors

AGENCY: Enviromental Proctection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Proctection Agency (EPA) will transfer to its contractor, Booz Allen and Hamilton, Inc., and their subcontractors, CDM Federal Programs Corporation, PRC Environmental Management, Inc., Geotrans, Inc., Meridian Research, Inc., and PEI Associates, Inc., and Versar, Inc. information which has been, or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). These firms will assist the Office of Waste Programs Enforcement in developing a methodology to summarize regional penalty calculations and penalty trends and then summarize the penalties. The contractor will also have access to a company's financial and tax records. This information may also be used to evaluate pollution prevention agreements in settlements. Some of the information may have a claim of business confidentiality.

DATES: The transfer of the confidential data submitted to EPA will occur no sooner than December 2, 1991.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste, Information Management Staff (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data".

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, U.S. Environmental Protection Agency, (202) 260–3410.

SUPPLEMENTARY INFORMATION

I. Transfer of Data

The Environmental Protection Agency is in the process of revising the RCRA Civil Penalty Policy (RCPP). Under EPA Contract 68–W0–0006, Booz Allen and Hamilton, Inc., and their subcontractors will assist the Office of Waste Programs Enforcement, RCRA Enforcement Division, in developing a methodology to summarize regional penalty calculations and penalty trends and then summarize the penalties. The contractor will have access to company financial and tax records which may be used to evaluate pollution prevention agreements in settlements. The contractor and subcontractors will also provide program and training support relating to the Resource Conservation and Recovery Act (RCRA) and other statutes that may affect enforcement activities under RCRA.

In accordance with 40 CFR 2.305(h), EPA has determined that Booz Allen and Hamilton, and their subcontractors, require access to confidential business submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA will transfer to Booz Allen and Hamilton, Inc., and their subcontractors, on a need to know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Booz Allen and Hamilton, Inc., will return all such materials to EPA.

Booz Allen, and their subcontractors, have been authorized to have access after they have adhered to the security

requirements detailed in the "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." EPA will approve the security plans of the contractors and will inspect their facilities, and approve them, prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign nondisclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the "Contractor Requirements Manual."

Dated: November 20, 1991.

Richard Guimond,

Acting Assistant Administrator.

[FR Doc. 91-28386 Filed 11-25-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4035-2]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Westat, information which has been or will be submitted to EPA under the Resource Conservation and Recovery Act (RCRA). Westat is assisting EPA in establishing a national data base on waste generation and management. The contractor will also assist several EPA Regions and States in compiling regional or State specific data bases. These data bases will be used to satisfy RCRA's 1991 Biennial Reporting requirements and to develop analyses on the adequacy of waste management capacity, which is required by the Superfund Amendments and the Reauthorization Act of 1986 (SARA). These data bases will also be used to develop the 1989 and 1991 National Hazardous Waste Reports to Congress. Some of the information may have a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than December 2, 1991.

ADDRESSEE: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 382-3410.

SUPPLEMENTARY INFORMATION:

1. Transfer of Data

The U.S. Environmental Protection Agency is using annual and biennial report data to establish a national data base on waste generation and management. This data base will be used to develop analyses on the adequacy of waste management capacity, which is required by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The data base will also form the basis of national reports to Congress.

Under EPA Contract No. 68-W1-0019, Westat will assist the Information Management Branch, Communications Analysis and Budget Division, Office of Solid Waste, in using annual and biennial report data to establish a national data base on waste generation and management. Some of the information being transferred may be claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Westat, requires access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract.

EPA is issuing this notice to inform all submitters of confidential business information on the 1989 or 1991 Hazardous Waste Report Forms (EPA Form 8700-13) that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Westat will return all materials to EPA.

Westat has been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." EPA will approve the security plans of the contractor and reinspect their facility, and approve them prior to RCRA CBI being transmitted to the contractor. Westat personnel will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the "Contractor Requirements Security Manual."

Dated: November 19, 1991.

Don Clay,

Assistant Administrator.

[FR Doc. 91-28387 Filed 11-25-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59923; FRL 4005-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 16 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-37, November 27, 1991.

Y 92-38, 92-39, 92-40, 92-41, 92-42, 92-43, 92-44, 92-45, 92-46, 92-47, 92-48, December 2, 1991.

Y 92-49, December 3, 1991.

Y 92-50, 92-51, 92-52, December 5, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-37

Manufacturer. Confidential.

Chemical. (G) Polymer of alkaline glycol, alkane polyol, benzene dicarboxylic acid, dibasic acid, terminated with trimellitic anhydride, and soluabloeizer with dimethylethanol amine.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 92-38

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane acrylic graft copolymer.

Use/Production. (S) Modifier for coatings, inks, adhesives. Prod. range: Confidential.

Y 92-39

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-40

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-41

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-42

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-43

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-44

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-45

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-46

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-47

Manufacturer. Confidential.

Chemical. (G) Saturated polyester, modified with glycidyl compound.

Use/Production. (G) Automotive and communication industrial. Prod. range: Confidential.

Y 92-48

Manufacturer. Dow Corning Corporation.

Chemical. (G) Saturated polyester.

Use/Production. (S) Silicone adhesive/sealant for electronic components. Prod. range: Confidential.

Y 92-49

Manufacturer. Confidential.

Chemical. (G) Polylacetone-base triol polymer.

Use/Production. (S) Bind for coating. Prod. range: Confidential.

Y 92-50

Manufacturer. Confidential.

Chemical. (G) Oil free aromatic polyester.

Use/Production. (S) Thermoset protection coating. Prod. range: 2,666,400–17,331,600 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 1,746 mg/kg species (rat). Acute dermal toxicity: LD50 435 mg/kg species (rabbit).

Y 92-51

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Fiberglass binder resin. Prod. range: Confidential.

Y 92-52

Manufacturer. Eastman Kodak Company.

Chemical. (G) Polymer of styrene, alkyl acrylate and sulfoalky acrylate.

Use/Production. (G) Contained use in an article. Prod. range: 70,000–80,000 kg/yr.

Dated: November 21, 1991.

Janette Petersen,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-28383 Filed 11-25-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Majesty Cruise Line, Inc., Ulysses Cruises, Inc. and Compania Naviera 1312, SA, 901 South America Way, Miami, FL 33132.

Vessel: ROYAL MAJESTY

Dated: November 20, 1991.

Joseph C. Polking

Secretary.

[FR Doc. 91-28284 Filed 11-25-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-54]

DSR Shipping Co., Inc. v. Great White Fleet, Ltd. D/B/A Chiquita Brands, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by DSR Shipping Co., Inc. ("Complainant") against Great White Fleet, Ltd. d/b/a Chiquita Brands, Inc. ("Respondent") was served November 20, 1991. Complainant alleges that Respondent engaged in violations of sections 10(b) (1), (3), (5), (12) and (14) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b) (1), (3), (5), (12) and (14), by (1) charging and collecting greater compensation for the transportation of property than the rate shown in its service contract; (2) refusing to accept hazardous cargoes under its service contract; (3) acting in an arbitrary and unreasonable manner in accepting refrigerated cargoes and automobiles loaded in containers, conducting container inspections, revising the essential terms publication and implementing various service contract provisions; (4) unduly preferencing the "me-too" shipper of a service contract; and (5) using, without Complainant's consent, information to solicit Complainant's customers.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall

commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by November 20, 1992, and the final decision of the Commission shall be issued by March 22, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91-28342 Filed 11-25-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Associated Banc-Corp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin; to merge with F & M Financial Services Corporation, Menomonee Falls, Wisconsin, and F & M North Corporation, Menomonee Falls, Wisconsin, and thereby indirectly acquire F & M Bank, Menomonee Falls, Wisconsin; F & M Bank, St. Francis, Wisconsin; F & M Bank, Fond du Lac, Wisconsin; and F & M Bank, Wittenberg, Wisconsin.

In connection with this application, Applicant also proposes to acquire F & M Trust Company, Inc., Menomonee Falls, Wisconsin, and thereby engage in trust company activities pursuant to § 225.25(b)(3); to acquire Leasenu, Inc., Menomonee Falls, Wisconsin, and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the State of Wisconsin.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Security Bancorp, Inc., Southgate, Michigan; Security Bank of Commerce, Hamtramck, Michigan; Security Bank of Monroe, Monroe, Michigan; Security Bank Northeast, Richmond, Michigan; Security Bank and Trust Company, Southgate, Michigan; and Security Bank St. Clair Shores, St. Clair Shores, Michigan.

In connection with this application, Applicant also proposes to acquire United Bankers Life Insurance Company, Kalamazoo, Michigan, and thereby engage in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(i); SecureData Corp., Southgate, Michigan, and thereby engage in data processing activities pursuant to § 225.25(b)(7); and Security Realcorp, Inc., Southgate, Michigan and thereby engage in servicing activities pursuant to § 225.22(a)(2)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-28340 Filed 11-25-91; 8:45 am]

BILLING CODE 6210-01-F

First Autauga Bancshares, Inc., 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 December 17, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First Autauga Bancshares, Inc., Montgomery, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Cee Bee Corporation, Prattville, Alabama, and thereby indirectly acquire Citizens Bank, Prattville, Alabama.

2. PBA Financial Corporation, Mobile, Alabama; to become a bank holding company by acquiring 90.70 percent of the voting shares of Peoples Bancshares, Inc., Elba, Alabama, and thereby

indirectly acquire The Peoples Bank, Elba, Alabama.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with First Breck Holding Company, Breckenridge, Minnesota, and thereby indirectly acquire First National Bank of Breckenridge, Breckenridge, Minnesota.

2. Farmers State Corporation, Mountain Lake, Minnesota; to acquire 99.1 percent of the voting shares of Jackson State Bank, Jackson, Minnesota.

3. McVille Financial Services, Inc., McVille, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of McVille State Bank, McVille, North Dakota.

4. Wabasso Bancshares, Inc., Wabasso, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Wabasso State Bank, Wabasso, Minnesota. **Comments on this application must be received by December 10, 1991.**

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The F. Calvin Packard Family Limited Partnership, Springville, Utah; to become a bank holding company by acquiring 24.9 percent of the voting shares of Central Bancorporation, Springville, Utah, and thereby indirectly acquire Central Bank, Springville, Utah.

2. Philippine National Bank, Manila, Philippines; to acquire 100 percent of the voting shares of California Overseas Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, November 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-28345 Filed 11-25-91; 8:45 am]

BILLING CODE 6210-01-F

Mary Palmifano Gritzman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 17, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Mary Palmifano Gritzman, and Max Gritzman, both of Gretna, Louisiana; to retain 10.64 percent of the voting shares of Gulf South Bancshares, Inc., Gretna, Louisiana, and thereby indirectly retain Gulf South Bank and Trust Company, Gretna, Louisiana.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Virginia H. Cannon; to acquire 19.6 percent of the voting shares of Findlay Bancshares, Inc., Findlay, Illinois, and thereby indirectly acquire Bank of Findlay, Findlay, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Robert F. Tanner Trust, Robert F. Tanner, Trustee, Tulsa, Oklahma; to acquire an additional 7.78 percent of the voting shares of BOC Bancshares, Inc., Chouteau, Oklahoma, for a total of 27.33 percent, and thereby indirectly acquire Bank of Commerce, Chouteau, Oklahoma.

Board of Governors of the Federal Reserve System, November 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-28346 Filed 11-25-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/28/91 AND 11/08/91

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cliffs Drilling Company, Chiles Offshore Corporation, Chiles Offshore Corporation	92-0036	10/28/91
Nakamichi Corporation, Nakamichi Corporation, Trace Mountain Products, Inc	92-0038	10/28/91
The Louisiana Land and Exploration Company, LL&E Royalty Trust, LL&E Royalty Trust	92-0043	10/28/91
Medeva PLC, Adams Laboratories, Inc., Adams Laboratories, Inc	92-0053	10/28/91
Centex Corporation, The Mangano Company, Inc., The Mangano Company, Inc	92-0061	10/28/91
Komag, Incorporated, Dastek, Inc., Dastek, Inc	92-0062	10/28/91
Magma Copper Company, Magma Copper Company, Robinson Mining Limited Partnership	92-0068	10/28/91
TECO Energy, Inc., Donn Chic ering, Panther Land Corporation	92-0085	10/28/91
Kmart Corporation, OfficeMax, Inc., OfficeMax, Inc	92-0088	10/28/91
Code, Hennessey & Simmons Limited Partnership, M. Kamenstein, Inc., M. Kamenstein, Inc	92-0089	10/28/91
Ocelot Industries Ltd., Metallgesellschaft AG, MG Petrochemicals Corp	92-0028	10/29/91
Jack Farber, Spearhead Industries, Inc., Spearhead Industries, Inc	92-0094	10/29/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/28/91 AND 11/08/91—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Banc One Corporation, General Electric Company, Monogram Bank of Ohio	92-0066	10/31/91
James E. LaCrosse, Consolidated Holding Corporation, Consolidated Holding Corporation	92-0010	11/01/91
Fred Knoll, GTE Corporation, Telos Corporation	92-0082	11/01/91
Michael C. Carlos, McKesson Corporation, McKesson Corporation	92-0030	11/03/91
Barings plc, CDD Acquisition Corporation, CDD Acquisition Corporation	92-0081	11/04/91
Cross Timbers Oil Company, L. P., USX Corporation, Marathon Oil Company	92-0116	11/04/91
The Williams Companies, Inc., Ronald J. Haan, R. Haan Ventures, Inc	92-0126	11/04/91
Madison Group, L.P., Wyatt, Incorporated, Wyatt, Incorporated	92-0048	11/05/91
Madison Group, L.P., New Haven Terminal, Inc., New Haven Terminal, Inc	92-0049	11/05/91
Carl-Zeiss-Stiftung, Allergan, Inc., Allergan Humphrey	92-0059	11/05/91
American Home Products Corporation, Genetics Institute, Inc., Genetics Institute, Inc	92-0039	11/06/91
Pacific Gas and Electric Company, The British Petroleum Company p.l.c., TEX/CON Oil & Gas Company	92-0079	11/06/91
The Fuji Bank, Limited, Patricia A. Harter, Harter Corporation	92-0092	11/06/91
Green Equity Investors, L.P., Kash n' Karry Food Stores, Inc., Kash n' Karry Food Stores, Inc	92-0105	11/06/91
E. Merck Beteiligungen OHG, L'Air Liquide, S.A., Lyonnaise Industrielle Pharmaceutique	92-0110	11/06/91
Geodyne Resources, Inc., National Cooperative Refinery Association, National Cooperative Refinery Association	92-0093	11/08/91
AMP Incorporated, Richard G. Sass, National Applied Science, Inc	92-0100	11/08/91
Viatech, Inc., Plastic Containers, Inc., Plastic Containers, Inc	92-0114	11/08/91
Plaza Ltd., Plastic Containers, Inc., Plastic Containers, Inc	92-0115	11/08/91
LG&E Energy Corp., Hadson Corporation, Hadson Power Systems, Incorporated	92-0118	11/08/91
The Wharf (Holdings) Limited, Sextant Investments Limited, Kuo Houston Corporation	92-0121	11/08/91
Hanson PLC, Hanson PLC, International Mini-Warehouse Associates, L.P.	92-0141	11/08/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition.

Donald S. Clark,

Secretary.

[FR Doc. 91-28395 Filed 11-25-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892 3104]

The Money Store Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a New Jersey-based company and its subsidiaries to pay injured consumers redress totalling more than $1 million, and would prohibit them from violating certain provisions of the Truth in Lending Act.

DATES: Comments must be received on or before January 27, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Chris Couillou, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., room 1000, Atlanta, GA 30367. (404) 347-4036.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc., corporations, (hereafter sometimes referred to as "proposed respondents") by their duly authorized officer and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. The Money Store Inc. is a New Jersey corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey 07083.

2. The Money Store is a New Jersey corporation, with its principal place of business at 294 Morris Avenue, Springfield, New Jersey 07081.

3. The Money Store/California Inc. is a California corporation, with its principal place of business at 17530 Ventura Blvd., suite 101, Encino, California 91316.

4. The Money Store/Connecticut Inc. is a Connecticut corporation, with its principal place of business at 1025 Silas Deane Hwy., Wethersfield, Connecticut 06109.

5. The Money Store/DC Inc. is a Virginia corporation, with its principal place of business at 3750 University Blvd., suite 2B, Kensington, Maryland 20895.

6. The Money Store/Delaware Inc. is a Delaware corporation, with its principal place of business at 4512 Kirkwood Highway, Wilmington, Delaware 19808.

7. The Money Store/Empire State Inc. is a New York corporation, with its principal place of business at 265 Glen Cove Road, Carle Place, New York 11514.

8. The Money Store Financial Co. Inc. is a Pennsylvania corporation, with its principal place of business at Trevose Corporate Center, 4612 Street Road, Trevose, Pennsylvania 19047.

9. The Money Store/Georgia Inc. is a Georgia corporation, with its principal

place of business at 1165 Northchase Pkwy., Suite 100, Marietta, Georgia 30067.

10. The Money Store Home Equity Corp. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, suite 901, Louisville, Kentucky 40205.

11. The Money Store/Kentucky Inc. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, suite 901, Louisville, Kentucky 40205.

12. The Money Store/Maine Inc. is a Maine corporation, with its principal place of business at 201 Main Street, Westbrook, Maine 04092.

13. The Money Store/Maryland Inc. is a Maryland corporation, with its principal place of business at 920 Providence Road, suite 101, Towson, Maryland 21294.

14. The Money Store/Massachusetts Inc. is a Massachusetts corporation, with its principal place of business at 389 Worcester Road, 2nd Floor, Framingham, Massachusetts 01761.

15. The Money Store/New Hampshire Inc. is a New Hampshire corporation, with its principal place of business at 981 Second Street, Manchester, New Hampshire 03102.

16. The Money Store/North Carolina Inc. is a North Carolina corporation, with its principal place of business at 6525 Morrison Blvd., suite 408, Charlotte, North Carolina 28211.

17. The Money Store/Rhode Island Inc. is a Rhode Island corporation, with its principal place of business at 1071 Park Avenue, Cranston, Rhode Island 02910.

18. The Money Store/Vermont Inc. is a Vermont corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey 07083.

19. M Mortgage Inc. is a South Carolina corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey 07083.

20. The Money Store/Michigan Inc. is a Michigan corporation, with its principal place of business at 16801 Newburgh Road, suite 103, Livonia, Michigan 48154.

21. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

22. Proposed respondents waive: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

23. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

24. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist and make adjustments in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist and make adjustments shall have the same force and effect as and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

25. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

26. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

Order

I.

It is ordered that respondents The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc., their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension of credit to any consumer primarily for personal, family or household purposes (hereinafter referred to as "consumer credit"), which credit is subject to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to disclose clearly, conspicuously and accurately the dollar amount the credit will cost the consumer and the cost of credit expressed as a yearly rate as required by section 128(a)(3)–(4) of the Truth in Lending Act, 15 U.S.C. 1638(a)(3)–(4), and §§ 226.18(d)–(e) and 226.22 of Regulation Z, 12 CFR 226.18(d)–(e) and 226.22, and from failing to use the term "finance charge" to describe the dollar amount the credit will cost and the term "annual percentage rate" to describe the cost of credit expressed as a yearly rate, as required by section 128(a)(3)–(4) of the Truth in Lending Act, 15 U.S.C. 1638(a)(3)–(4), and § 226.18(d)–(e) of Regulation Z, 12 CFR 226.18(d)–(e).

II.

It is further ordered that respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, in connection with the extension of consumer credit, which credit is subject

to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to disclose clearly, conspicuously and accurately the number, amounts, and timing of payments scheduled to repay the obligation, as required by section 128(a)(6) of the Truth in Lending Act, 15 U.S.C. 1638(a)(6), and § 226.18(g) of Regulation Z, 12 CFR 226.18(g).

III.

It is further ordered that respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, in connection with the extension of consumer credit, which credit is subject to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to make all disclosures in accordance with section 128 of the Truth in Lending Act, 15 U.S.C. 1638, and §§ 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18.

IV.

It is further ordered that as used in this order "365/360 method" refers to amortization of a credit extension by applying 1/360th of the annual rate of interest to the balance of the credit extension during each of the calendar days of the year, "360/360 method" refers to amortization of a credit extension assuming 12 equal months of 30 days and applying 1/360th of the annual interest rate to each of those days, and "365/365 method" refers to amortization of a credit extension by applying 1/365th of the annual rate of interest to the balance of the credit extension during each of the calendar days of the year.

V.

It is further ordered that, within thirty days of the date of service of this order, respondents and their successors and assigns shall make adjustments for each of their customers who received an extension of consumer credit that was amortized for at least some period of time using the 365/360 method, that was not extinguished before February 20, 1990, and on which disclosures of finance charges did not take into account the effect that the use of the 365/360 method would have in increasing the finance charges. The total adjustments for all these customers shall be $1,112,000, and the adjustment for each customer shall be in the same proportion to the total adjustment of $1,112,000 as the number calculated for each such customer, based on appendix A's formula, is to the sum of the numbers calculated for all such customers, based on appendix A's formula.

VI.

It is further ordered that respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, do forthwith cease and desist from using the 365/360 method to amortize the extensions of consumer credit in which disclosures of finance charges were made that did not take into account the effect that the use of the 365/360 method would have in increasing the finance charges, and that respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, shall use in place of the 365/360 method in amortizing those extensions of consumer credit either the 360/360 method or the 365/365 method.

It is further ordered that respondents and their successors and assigns shall make adjustments pursuant to this order by mailing a check in the amount of the adjustment due to the current or last known address of each customer who is to receive an adjustment under paragraph V unless the customer is delinquent in his or her loan payments. If the customer is delinquent, the amount of the adjustment shall be credited to the customer's account. For purposes of this order, respondents shall not be required to make adjustments where the amount of the adjustment is less than one dollar. The checks mailed to customers shall be accompanied by one of two letters. If the credit extension to the customer has not expired, the following letter shall be used:

Dear Customer:

We have enclosed a check for you because you may have been charged more interest on your loan with The Money Store than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that requires the enclosed amount be sent to you. This check is yours to keep and use as you desire. You may wish to use the enclosed amount to reduce the balance of your loan. If you wish to use the check to reduce your loan balance, please endorse the check, write above your endorsement "Pay to the order of The Money Store", and return the check to the address stated below along with your next scheduled payment.

[Address to be inserted]

If you do not wish to use the check to reduce your loan balance, you may cash it as you would any other check.

If you should have any questions about this letter, please call [Name of an Employee of The Money Store Inc. to be inserted] at the following toll free number: [Number to be inserted]. Thank you for your attention.

Very truly yours,

The Money Store.

if the credit extension to the customer has expired, the following letter shall be used:

Dear Former Customer:

We have enclosed a check for you because you may have been charged more interest on your past loan with The Money Store than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that requires the enclosed amount be sent to you. This check is yours to keep and use as you desire.

If you should have any questions about this letter, please call [Name of an Employee of the Money Store Inc. to be inserted] at the following toll free number: [Number to be inserted]. Thank you for your attention.

Very truly yours,

The Money Store.

In the case of customers who are delinquent in their loan payments and whose adjustments are made by account credits, the following letter shall be mailed to the customer at the time the adjustment is made along with a receipt indicating the customer's name, loan or account number, and the amount of the adjustment credited to the customer's account:

Dear Customer:

We have enclosed a receipt stating an amount that has been credited to your loan account with The Money Store because you may have been charged more interest on your loan than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that required this credit be made; this has reduced the amount you owe on your loan.

If you should have any questions about this letter, please call [Name of an Employee of The Money Store Inc. to be inserted] at the following toll free number: [Number to be inserted]. Thank you for your attention.

Very truly yours,

The Money Store.

Each envelope containing a letter to a customer pursuant to this paragraph shall bear the following legend in red, 14 point print on its face: IMPORTANT NOTICE OF INTEREST REFUND ENCLOSED.

VIII.

It is further ordered that, to the extent checks mailed under this order are returned as undeliverable or are not cashed within one hundred and forty days of the date of service of this order, respondents and their successors and assigns shall make a certified check payable to the Federal Trade Commission for an amount equal to the total of the checks that have been returned as undeliverable and the checks that have not been cashed and shall deliver that certified check to the

following person and address within two hundred days of the date of service of this order: William S. Sanger, Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission/S–4631, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

At the time of delivering the certified check, respondents shall also deliver to the foregoing person a list, in both hard copy and computer readable form, of the names and addresses of each customer whose account was credited under paragraph VII and of each customer to whom the respondents mailed a check under paragraph VII. As to each customer whose account was credited, the list shall indicate the amount of the credit. As to each customer who was mailed a check, the list shall indicate the amount of the check mailed to that customer and whether the check was cashed. Customers who were mailed a check that was not cashed shall be listed separately. The Commission in its sole discretion shall determine whether the amount of money remaining undistributed is sufficient to make practical further distribution of adjustments by the Commission to customers. If the Commission determines, at any time, that further distribution of adjustments is impractical, any remaining undistributed funds shall be sent to the U.S. Treasury.

IX.

It is further ordered that respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order.

X.

It is further ordered that respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, shall distribute a copy of this order to each of their officers.

XI.

It is further ordered that respondents and their successors and assigns shall notify the Commission at least thirty days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other changes in respondents, their successors and assigns that may affect compliance obligations arising out of this order.

XII.

It is further ordered that respondents and their successors and assigns shall, within two hundred days after the date of service of this order, and at such other times as the Federal Trade Commission may by written notice require, file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this order, including, but not limited to, a full accounting of the customers to whom adjustments have been made and the amounts of such adjustments.

Appendix A

The number calculated for each customer described in paragraph V of the Order shall be calculated using the following formula:

Number = $P \times (A + B \times C)$ where

$A = (1+si)^n - (1+i)^n$

$$B = \frac{(1+i)^T}{(1+i)^T - 1}$$

$$C = (1+i)^n - 1 - \left[\frac{(1+si)^n - 1}{s}\right]$$

$$i = \frac{\text{Annual interest rate on promissory note evidencing credit extension to customer}}{12}$$

n = Number of payments made by customer through August 1990

P = Beginning principal amount of customer's credit extension

$$S = \frac{365}{360}$$

T = Term of customer's credit extension expressed as a number of months

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents have violated sections 106, 107 and 128 of the Truth in Lending Act, as amended, 15 U.S.C. 1605, 1606, and 1638, and §§ 226.17, 226.18 (d) and (g), and 226.22 of Regulation Z, as amended, 12 CFR 226.17, 226.18 (d), (g), and 226.22, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the course of extending consumer credit. Specifically, the complaint alleges that respondents disclosed payment schedules to consumers that were insufficient to fully repay loans made by them. This was the result of respondents' use of the 360/360 method or a similar method to compute the payment schedules that were given to each consumer when respondents afterwards frequently amortized their loans using the 365/360 method according to the complaint. In addition, the complaint alleges that respondents disclosed understated finance charges and annual percentage rates to consumers.

The proposed consent order requires the respondents to make a total of $1,112,000 in adjustments to customers whose extensions of credit from respondents were amortized using the undisclosed method. The proposed consent order provides that the respondents shall mail letters to

customers who are to receive adjustments under the order. The letters will explain that the adjustments are being made because the customers may have been charged more interest on their loans with respondents than they were told. In addition, the proposed consent requires that to the extent adjustment checks are returned as undeliverable or go uncashed by respondents' customers, that respondents shall deliver a certified check for the total amount of such checks to the Commission. The order provides that the Commission shall decide either to redistribute leftover funds to consumers or to send the remainder to the U.S. Treasury.

The proposed consent order also prohibits respondents from continuing to use the 365/360 method on the loans involved in this complaint. Instead, the proposed consent order requires that respondents use the 360/360 method or the 365/365 method in amortizing the remainder of these loans. In addition, the proposed consent order requires compliance with specific disclosure requirements of the Truth in Lending Act and Regulation Z including, but not limited to, those concerning payment schedules, finance charges, and annual percentage rates.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-28390 Filed 11-25-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3350]

Nintendo of America Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Redmond, WA, based corporation from fixing the prices at which its dealers advertise and sell Nintendo home video-game hardware to consumers. In addition, the consent order requires the respondent to mail a letter to all of its dealers advising them of the order and that they can advertise and sell the products at any price without adverse action by Nintendo.

DATES: Complaint and Order issued November 14, 1991.[1]

FOR FURTHER INFORMATION CONTACT: L. Barry Costilo, FTC/S-2627, Washington, DC 20580. (202) 326-2748.

SUPPLEMENTARY INFORMATION: On Thursday, April 18, 1991, there was published in the **Federal Register**, 56 FR 15883, a proposed consent agreement with analysis In the Matter of Nintendo of America Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-28394 Filed 11-25-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 882 3134]

Slender You, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Tennessee company and its officers from making false and misleading representations regarding the weight loss and physical fitness benefits of any exercise devices and diet or fitness programs, and would require the respondents to have competent and reliable scientific evidence to substantiate such claims at the time they are disseminated.

DATES: Comments must be received on or before January 27, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Theresa McGrew or Thomas Jefferson, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL. 60603. (312) 353-4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of Slender You, Inc., a corporation, and Diane K. Clark and Robert E. Clark, individually, and as officers of the corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Slender You, Inc., and Diane K. Clark and Robert E. Clark, individually and as officers of Slender You, Inc.; and it now appearing that Slender You, Inc., and Diane K. Clark and Robert E. Clark, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is Hereby Agreed by and between Slender You, Inc., and Diane K. Clark and Robert E. Clark, individually and as officers of Slender You, Inc., and their counsel, and counsel for the Federal Trade Commission that:

1. Proposed respondent Slender You, Inc., hereinafter referred to as the corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business at 334 Industrial Parkway, Crossville, Tennessee 38555.

2. Proposed respondents Diane K. Clark and Robert E. Clark are officers of the corporate respondent named herein. They have formulated, directed and controlled the acts and practices of the corporation, including all the acts and practices set forth in the complaint accompanying this agreement. Their

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Streets & Pennsylvania Avenue, NW., Washington, DC 20580.

address is the same as that of the corporate respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint here attached.

4. Proposed respondents waive: a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of the findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For the purpose of this Order, the following definition shall apply:

Passive Exercise Machine means any motorized table, equipment or device that supports body weight, and is capable of continuously moving isolated groups of muscles through a range of motion in a manner requiring little or no effort by the user. For purposes of this order a passive exercise machine shall include such devices known or referred to as toning tables, motorized calisthenics tables or any other device of substantially the same construction, design or operation.

I

It is Ordered that respondents Slender You, Inc., a corporation, its successors and assigns, and Diane K. Clark and Robert E. Clark, individually and as officers and directors of Slender You, Inc., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of any passive exercise machine in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that use of any such machine in a manner requiring little or no effort by the user:

a. Reduces or helps to reduce overall body fat or body fat in any particular areas of the human body.

b. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body.

c. Tones or firms human tissue including muscle in a normal healthy individual.

d. Removes or eliminates cellulite or any other form of subcutaneous body fat.

e. Flushes out or contributes to the removal of fat including acid waste, toxic waste or any other bodily waste from an individual's body system.

f. Provides health or physical fitness benefits similar or superior to those provided by rigious forms of exercise for normal healthy individuals.

II

It is Further Ordered that respondents Slender You, Inc., a corporation, and Diane K. Clark and Robert E. Clark, individually and as officers of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of any passive exercise machine or any fitness or diet program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that use of any such machine or program:

1. Reduces or helps to reduce overall body fat or body fat in any particular area of the human body;

2. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body;

3. Tones or firms human tissue including muscle;

4. Removes or eliminates cellulite or any other form of subcutaneous body fat;

5. Flushes out or contributes to the removal of fat inducing acid waste, toxic waste or any other bodily waste from an individual's body system; or

6. Provides health or physical fitness benefits similar or superior to those provided by rigorous forms of exercise.

unless at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of the Order, for any test, analysis, research, study or other evidence to be "competent and reliable," the test, analysis, research, study, or other evidence shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

B. Representing, directly or by implication, that any consumer endorsement or testimonial in favor of any such machine or program represents the typical or ordinary experience of members of the public who use the machine or program unless such is the case.

III

It is Further Ordered that respondents shall for at least three (3) years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order.

B. All tests, reports, studies, surveys, demonstrations or other evidence, including consumer complaints, in their possession or control that contradict, qualify or call into question any representation covered by this Order.

C. A copy of each non-identical form of promotional material disseminated by respondents.

IV.

It is Further Ordered that respondents shall for at least three (3) years after the date of service of this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor, purchaser or lessee for commercial use of respondents' passive exercise machine, along with a copy of any training manuals or other training material disseminated to such persons.

V.

It is Further Ordered that respondents shall:

A. Within sixty (60) days after the date of service of this Order send via Certified mail with return receipt, a copy of this Order to the last known name and address of each person or firm that is a current or former Slender You salon operator or dealer, and to each purchaser of Slender You equipment, and that respondents shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying each such return mail receipt, as well as a list of the names, addresses and phone numbers of those parties to whom respondents distributed a copy of this Order.

B. Distribute a copy of this Order to each of respondents' current officers, agents, representatives or employees who are engaged in the preparation of advertisements or other promotional materials, or any training or instructional materials, for passive exercise machines.

VI.

It is Further Ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

VII.

It is Further Ordered that the individual respondents named herein shall for a period of 5 years from the date of service of this Order, promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines and of their affiliation with any new business or employment in which their own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines, with each such notice to include the respondents' new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of respondents' duties and responsibilities in connection with the business or employment.

VIII.

It is Further Ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Slender You, Inc., Robert E. Clark, and Diane K. Clark.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising for a passive exercise device commonly referred to as continuous passive motion (CPM) tables or toning tables. The Commission's complaint charges that the respondents' advertisements contained false, misleading, and unsubstantiated representations concerning the ability of CPM tables to provide normal healthy individuals with weight loss and physical fitness benefits similar or superior to those provided by rigorous forms of exercise. The complaint also alleges that the respondents represented that consumers could achieve weight loss, inch loss, cellulite removal, and physical fitness benefits with little or no physical exertion by the user as a result of the passive exercise provided by CPM tables. In addition, the complaint alleges that the respondents represented that they possessed and relied upon a reasonable basis for the representations made in their advertisements. Finally, the complaint alleges that respondents represented that various consumer testimonials and endorsements reflected the experiences of typical consumers in terms of weight loss and inch loss after using the machines.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. The proposed order also extends to any other representations made by the respondents and to all passive exercise machines and devices, including CPM tables, and to any diet or fitness programs.

Part I of the proposed consent order prohibits the respondents from making certain false and misleading representations regarding the ability of passive exercise machines to provide weight loss and physical fitness benefits. Part II of the proposed order requires the respondents to have competent and reliable scientific evidence to substantiate any weight loss or physical fitness claims at the time they are disseminated. In addition, part II prohibits the respondents from using consumer endorsements and testimonials to represent that the experience characterized in an endorsement or testimonial is typical of that which ordinary members of the public would experience when using any passive exercise machine or any fitness

or diet program when such is not the case.

The remaining parts of the proposed consent order requires the respondents to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees and to current or former salon operators, distributors, or purchasers, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-28391 Filed 11-25-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3312]

T&N plc; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceedings and modifies the 1990 order, regarding the divestiture of certain thinwall engine bearing assets. The Commission has determined that the potential harm to respondent's ability to compete outweighs any further need to require a divestiture of the remaining VanAm inventory.

DATES: Consent order issued November 8, 1990. Modifying order issued November 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth Libby, FTC/S-2115, Washington, DC 20580. (202) 326-2694.

SUPPLEMENTARY INFORMATION: In the Matter of T&N plc. The prohibited trade practices and/or corrective actions as set forth at 55 FR 51775, are changed and deleted, in part, as noted in the order that follows.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Commissioners: Janet D. Steiger, Chairman; Mary L. Azcuenaga; Deborah K. Owen; Roscoe B. Starek III; Dennis A. Yao.

Order Reopening Proceeding and Modifying Order

On September 24, 1991, respondent T&N plc ("T&N") filed a "Request for Confirmation that T&N has Discharged its Obligation to Divest the Thinwall Engine Bearing Assets or, in the Alternative, to Reopen the Proceeding and Modify the Consent Order" ("Request") pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Rule 2.51 of the Commission's Rules of Practice, 16 CFR 251. T&N seeks acknowledgement that it has fully complied with its obligations under Paragraph III of the Consent Order in Docket No. C-3312 ("Order") to divest the thinwall engine bearing assets or, in the alternative, a modification of Paragraph I.10(a) of the Order to relieve it of any further divestiture obligations under Paragraph III.

Paragraph III of the Order requires T&N to divest the "thinwall engine bearing assets" by November 21, 1991. Paragraph I.10(a) defines the term "thinwall engine bearing assets" to include, among other things:

All assets relating to the sale, marketing and distribution of bearings for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. aftermarket that are based at VanAm's facility in Tucker, Georgia, including, but not limited to, all customer lists, inventory (to be repackaged in plain boxes), and assignment of the building lease and all agreements with sales agencies and fee warehouses, excluding any trademarks or trade names[.]

To date T&N has received Commission approval for a divestiture to Automotive Components Limited ("ACL") of all the thinwall engine bearing assets required to be divested, with the exception of part of the VanAm inventory.

T&N asserts that the language and purpose of the Order do not require it to divest *all* the VanAm inventory. T&N asserts that where the Order requires the divestiture of "all" of a particular asset, it uses the word "all." Paragraph I.10(a) does not call for the divestiture of "all inventory." In addition, T&N urges that requiring the divestiture of the remaining VanAm inventory would be inconsistent with the Commission's unconditional approval of the divestiture to ACL. The Commission notified T&N by letter dated January 30, 1991, that it had approved the divestiture to ACL. That letter did not explicitly require T&N to take any further action to satisfy its obligation under Paragraph III. Furthermore, T&N notes that at the time the Commission approved the divestiture to ACL, the Commission was aware of the fact that ACL did not intend to acquire all of the VanAm inventory. In light of the above, T&N asserts that it has complied fully with its obligation under Paragraph III to divest the thinwall engine bearing assets.

T&N's arguments are not persuasive. The language of Paragraph I.10(a) clearly requires T&N to divest all of the VanAm inventory. T&N's argument ignores the fact that the definition at paragraph I.10(a) begins with the language "*all* assets relating to the sale, marketing and distribution of bearing for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. aftermarket that are based at VanAm's facility in Tucker, Georgia, ..." (emphasis added). By T&N's own reasoning, because the Order expressly uses the word "all" it requires the divestiture of "all assets." The definition identifies a number of assets, such as customer lists and inventory, required to be divested. In enumerating those particular assets the definition uses the language: "including, *but not limited to*, ..." (emphasis added). The particular assets enumerated in Paragraph I.10(a), such as "all customer lists," operate not as words of limitation, but rather as words to describe some of the assets included within the universe of "all assets." The inventory falls within this universe, and T&N is required to divest all of it.

Furthermore, assuming arguendo that its construction of Paragraph I.10(a) is correct, T&N fails to explain what part of the inventory it is required to divest. The Commission has explicitly stated in some orders, for example, that the assets in question be divested at the election of the acquirer. See e.g., Flowers Industries, Inc., Docket No. 9148, 102 F.T.C. 1700 (1983). The Commission has not done so in this case.

Finally, T&N's assertion that the Commission should have attached some condition to its approval of the divestiture to ACL is unfounded. Nothing in the order required the Commission to take such action in the event T&N chose to divest something less than all the thinwall engine bearing assets. The Order does not require T&N to divest the assets to a single acquirer. The language of Paragraph III(A) states that the divestiture of the thinwall assets "shall be only to an acquirer (or acquirers) that receive the prior approval of the Commission," (emphasis added), clearly recognizing the fact that the divestiture of the thinwall engine bearing assets might require T&N to enter into one or more transactions. Similarly, the Commission did not condition its approval of the divestiture to ACL upon T&N's divestiture of the tri-metal heavywall engine bearing assets required by Paragraph IV of the Order. The Commission obviously did not thereby relieve T&N of its obligation to divest those assets.

Accordingly, the Commission believes that T&N has not fulfilled its obligation to divest the thinwall engine bearing assets and will treat T&N's Request as a petition to reopen and modify the Order.

T&N asserts that it would be in the public interest to reopen and modify the Order to relieve it of the obligation to divest the remaining thinwall engine bearing assets. T&N has not requested, and the Commission has not considered, reopening and modification of the Order on the basis of changed conditions of fact or law. Pursuant to Rule 2.51, the Request was placed on the public record for ten days. No comments were received.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening the Order and modifying the language of Paragraph I.10(a) to relieve T&N of any further obligation to divest thinwall engine bearing assets.

Reopening and Modification of a Commission Ordered

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission "shall reopen" an order to consider whether it should be modified if the respondent "makes a satisfactory

showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part." [1] The language of section 5(b) plainly anticipates that the burden is on the petitioner to make satisfactory showing of changed conditions to obtain a reopening. T&N has not requested relief on these grounds.

The Commission may also modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Respondents are invited in requests to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51(b). In the case of a request for modification based on this ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. See Damon Corp., Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 24, 2983) (unpublished) ("Damon Letter"), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." Damon Corp., Docket No. C–2916, 101 F.T.C. 692 (1983). Once this showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. See Damon Letter at 2; see, *e.g.*, Chevron Corp., Docket No. C–3147, 105 F.T.C. 228 (1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for the order). The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codified[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," U.S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

The Order Should Be Opened and Modified

T&N has demonstrated an affirmative need to modify the order. Damon Corp., supra. T&N has demonstrated that the goals of the divestiture have been achieved and that requiring T&N to divest the remaining VanAm inventory could create an impediment to ACL's, as well as T&N's ability to compete effectively.

ACL neither wants nor needs any additional VanAm inventory. ACL acquired from T&N the exclusive right to use the VanAm trademark until February, 1992, and the non-exclusive right to use the trademark until March, 1993. ACL acquired the rights to the VanAm trademark to allow it to enter the market in an orderly fashion and to establish its presence in the market before developing its own trademark. Accordingly, it acquired sufficient quantities of the VanAm inventory to service its needs for that period of time. The order as currently written, however, requires T&N to divest all of the VanAm inventory, whether or not ACL wants or needs that additional inventory. If ACL, nonetheless, acquired the additional inventory, it would incur costs it did not anticipate in acquiring the rest of the thinwall engine bearing assets, which could undermine its ability to compete.

T&N is also being harmed by the continued operation of the Asset Maintenance and Improvment Agreement ("Asset Agreement"). The Asset Agreement prohibits T&N from integrating the McConnelsville facility it obtained from JP Industries into its other operations until it has accomplished the divestitures required by the Order.[2] T&N has demonstrated that the Asset Agreement imposes considerable costs on its operations and limits its ability to respond to changes in the market, thereby reducing its ability to compete effectively.

The reasons favoring modification outweigh any reasons for retaining the Order as written. Requiring T&N to divest the remaining inventory would not provide any competitive benefit, since there is no reason to believe that such a divestiture would facilitate entry of a new competitor.

The purpose of the thinwall engine bearing assets divestiture is "to remedy the lessening of competition resulting from the acquisition of [JP Industries] by T&N," Order at ¶ III, by establishing an acquirer, in this case ACL, as a viable competitor in the market. The Order does not seek to reduce competition by depriving T&N of the assets it needs to compete. Here, T&N has divested most of the thinwall engine bearing assets as required by the Order and in doing so has satisfied the purpose of order by establishing ACL as a competitor in the market.[3] Having determined that ACL would be a viable competitor without obtaining all the VanAm inventory, the Commission sees no need to require T&N to divest the remaining VanAm inventory. In addition, modification of the Order to relieve T&N of its remaining divestiture obligation will also result in the termination of T&N's continuing obligations under the Asset Agreement.

Having balanced the reasons favoring the requested modification against those opposing the modification, the Commission has determined that the potential harm to respondent's ability to compete outweighs any further need to require a divestiture of the remaining VanAm inventory. Chevron Corp., *supra*. In addition, T&N has shown that the modification it seeks would eliminate that impediment.

Accordingly, It is ordered, That the proceeding be, and it hereby is, reopened for the purpose of modifying the Order entered therein;

It is further ordered, That Paragraph I.10(a) be, and hereby is, amended to read:

All assets relating to the sale, marketing and distribution of bearings for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. aftermarket that are based at VanAm's facility in Tucker, Georgia, including, but not limited to, all customer lists, at the option of the acquirer all or part of VanAm's inventory (to be repackaged in plain boxes), and assignment of the building lease and all agreements with sales agencies and fee warehouses, excluding any trademarks or trade names;

By the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91–28393 Filed 11–25–91; 8:45 am]

BILLING CODE 6330–01–M

[1] Section 5(b) provides, in part: [T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

[2] On September 10, 1991, the Commission approved T&N's application to divest the tri-metal heavywall engine bearing assets to Babbitt Bearings, Inc. T&N and Babbitt Bearings closed that transaction on September 18, 1991.

[3] In *Batus, Inc.*, Docket No. C-3099, 104 F.T.C. 632 (1984), the Commission modified the order to eliminate the respondent's remaining obligation to divest assets where the respondent had demonstrated a good faith effort to comply fully with the divestiture requirements of the order and had divested most of those assets. The Commission modified the order in Chevron, *supra*, to eliminate a hold separate agreement where the respondent had submitted divestiture applications for all the assets required to be divested and the Commission had approved the divestitures with the exception of one application. The final divestiture application was awaiting Commission action. The Commission held that the potential harm resulting from the costs of continuing the hold separate agreement outweighed any need to keep it in effect. The hold separate had "accomplished its primary objectives" and was eliminated.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Development of Clinical Guidelines for Alzheimer's Disease Screening

The Agency for Health Care Policy and Research announces that it is establishing a panel of experts and health care consumers to develop clinical practice guidelines for the screening of elderly adults for Alzheimer's Disease and invites nominations of qualified individuals to serve as the chairperson(s) and as panel members.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality,

appropriateness, and effectiveness of health care services, and access to such services. The AHCPR is to achieve its goals through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing and delivery of health care services.

Section 911 of the Act (42 U.S.C. 299b) established within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the FORUM). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b–1) requires that the guidelines be:

1. Based on the best available research and professional judgment;

2. Presented in formats appropriate for use by physicians, health care practitioners, providers, medical educators, medical review organizations, and consumers of health care; and

3. In forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

Section 913 of the Act describes two mechanisms through which the FORUM and AHCPR can arrange for the development of guidelines: 1. Panels of qualified experts and health care consumers can be convened, and 2. Contracts can be awarded to public and private nonprofit organizations. The AHCPR has elected to use the panel process for the development of clinical practice guidelines for screening elderly adults for Alzheimer's Disease.

Panel Nominations

The panel of qualified experts and health care consumers that will develop the guidelines for Alzheimer's Disease screening will consist of a chairperson(s) and nine to fifteen members. To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing specialty and general practices, nurses, and allied health, other health care practitioners, and health care institutions, as well as consumers with pertinent experience or information. The AHCPR is especially interested in receiving nominations of individuals with experience in developing guidelines for Alzheimer's Disease and related dementias, persons with experience in basic and clinical research in Alzheimer's Disease and related dementias, persons with experience in the variety of clinical skills used in the screening and care of patients with dementia, and patient advocates or family members of persons with Alzheimer's Disease or a related dementia.

This Notice requests nominations of qualified individuals to serve on the panel as members and as panel chairperson(s). The functions of the panel of chairperson(s) are critical to the guideline development process and the final product. The chairperson(s) will provide leadership to the panel regarding methodology, literature review, panel deliberations, and formation of the final product. Nominations for the chairperson(s) should take into consideration the criteria specified below, which AHCPR will use in making its selection.

The AHCPR will appoint the panel chairperson(s) from among the nominations received using criteria that include the following:

- Relevant training and clinical experience,
- Demonstrated interest in quality assurance and research on the clinical condition, including publication of relevant peer-reviewed articles,
- Commitment to the need to produce clinical guidelines,
- Recognition in the field with a record of leadership in relevant activities,
- Broad public health view of the utility of particular procedure(s) or clinical service(s),
- Demonstrated capacity to lead a health care team in a group decisionmaking process,
- Demonstrated capacity to respond to consumer concerns, and
- Prior experience in developing guidelines for the clinical condition in question.

Once the panel chairperson(s) has been appointed, the nominations for members of the panel will be submitted for further review and consideration to the selected chairperson(s), who will in turn recommend proposed panel members to AHCPR. Appointments of the panel members will be made by AHCPR, after review of proposed members' qualifications and the overall composition of the panel to ensure representation of a range of experience and expertise.

Nominations should indicate whether the individual is being recommended to serve as the panel chairperson(s) or to serve as a member of the panel. Each nomination must include a copy of the individual's curriculum vitae or resume, plus a statement of the rationale for the specific nomination. To be considered, nominations must be received by December 31, 1991, at the following address: Office of the Forum on Quality and Effectiveness in Health Care, Attention: Kathleen A. McCormick, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 300, Rockville, MD 20852, Phone: (301) 227–6671.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, Clinical Guideline Development, dated August 1990. This Program Note, describing the activities underway by AHCPR for developing clinical practice guidelines, includes the process and criteria for selecting the panels. Copies may be obtained by calling the Center for Research Dissemination and Liaison, Agency for Health Care Policy and Research, at (301) 443–2904.

For further information on the process for developing guidelines for Alzheimer's Disease and related conditions, contact Kathleen A. McCormick, Ph.D., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, at the above address.

Dated: November 19, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91–28408 Filed 11–25–91; 8:45 am]

BILLING CODE 4160–90–M

Alcohol, Drug Abuse, and Mental Health Administration

Protection and Advocacy for Individuals with Mental Illness; Guidelines to States for Allotments

OFFICE: National Institute of Mental Health.

ACTION: Guidelines to States for Applying for Fiscal Year 1992, 1993, 1994 and 1995 Allotments for Protection and Advocacy for Individuals with Mental Illness.

Under authority of Public Law 99–319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq., as amended), and subject to the availability of funds, the National Institute of Mental Health will

accept applications for allotment until January 3. 1992. Applications received in response to this announcement shall be considered a request for receipt of allotment for fiscal years 1992, 1993, 1994, and 1995. Awards in each fiscal year will be made subject to the availability of funds. The Catalog of Federal Domestic Assistance number is 93.138.

Monetary allotments to States are available as a formula grant program under Public Law 99–319, as amended by the "Protection and Advocacy for Mentally Ill Individuals Act of 1991" (referred to hereafter as the Act).

The intention of the Act is to ensure the protection of rights of mentally ill individuals while they are residents in facilities providing care or treatment, including the period during which they are in the process of transportation and admission to such facilities, and for 90 days following discharge from such facilities.

The National Institute of Mental Health (NIMH) will award allotments to eligible State systems to enable them to provide programs and services designed (a) to protect and advocate the rights of mentally ill individuals and (b) to investigate incidents of abuse and neglect of mentally ill individuals.

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of mental health and mental disorders. Applicants may obtain a copy of Healthy People 2000 from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325.

Goals

The goals of the Act are:

- To ensure that the rights of mentally ill individuals are protected and advocated through activities to enforce Federal and State statutes, and the United States Constitution, also taking into account the Bill of Rights for Mental Health Patients (section 201 of the Act) concerning provision of appropriate treatment and services; and
- To assist States to operate a protection and advocacy system for mentally ill individuals which shall be independent of any agency providing treatment or services (other than advocacy services) to this population.

Eligibility

Allotments disbursed under the terms of this Act will be made only to State Protection and Advocacy (P&A) systems that have been established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041, 6042).

System Requirements

Section 105 of the Act, as amended, (42 U.S.C. 10805), provides a listing of requirements that must characterize the system established in a State to protect and advocate the rights of mentally ill individuals. (In addition, each State P&A must be in compliance with the system requirements stated under Section 142 (42 U.S.C. 6042), of Public Law 101–496, The Developmental Disabilities Assistance and Bill of Rights Act, as amended 1990. Assurances of compliance under Public Law 101–496 are submitted separately to the Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services.)

Use of Allotments

Allotments are intended to assist State P&A systems in supporting the costs of planning, developing, expanding, and implementing activities toward attainment of the protection and advocacy goals. These funds are to supplement, and not to supplant, non-Federal funds now available for those activities; i.e., they are not to be used to replace any existing resources or programs.

To provide protection and advocacy services to individuals with mental illness, eligible P&A systems are allowed and encouraged to enter into contracts with State agencies and nonprofit corporations which operate throughout the State including, in particular, organizations run by individuals who have received or are receiving mental health services, or by family members of such individuals. To be eligible, such a contractor must (a) be independent of any agency that provides treatment or services to mentally ill individuals; and (b) have the capacity to protect and advocate the rights of mentally ill individuals (section 104(a), as amended).

There are two independent statutory restrictions on use of funds:

1. An eligible system may not use more than 10 percent of its annual allotment for the costs of providing technical assistance and training. (This limitation applies only to training to benefit P&A system staff, governing board and advisory council members, and not to public education or constituency training activities.)

2. If the eligible system is a public entity, the government of the State in which the system is located may not require the system to obligate more than 5 percent of its allotment for administrative expenses, including internal or external monitoring or auditing, in any given fiscal year. Training and technical assistance activities are not considered administrative expenses.

Amount of Allotments

Each annual allotment is available for use by P&A systems for two (2) Federal fiscal years. Following the provisions of section 112 of the Act (as amended), amounts of the allotments to eligible systems are determined as a function of the respective State populations and per capita incomes, subject to the following:

(1) If the total amount appropriated in a fiscal year is at least $13,000,000—

(i) the amount of the minimum allotment to each of the several States, the District of Columbia, and Puerto Rico shall be greater of (a) $140,000 or (b) $125,000 in addition to the amount determined under (3) below; and

(ii) the amount of the minimum allotment to Guam, Northern Mariana Islands, American Samoa, and the Virgin Islands shall be the greater of (a) $75,000 or (b) $67,000 in addition to the amount determined under (3) below.

(2) If the total amount appropriated in a fiscal year is less than $13,000,000—

(i) the amount of the allotment to each of the several States, the District of Columbia, and Puerto Rico shall not be less than $125,000 in addition to the amount determined under (3) below; and

(ii) the amount of the minimum allotment to Guam, Northern Mariana Islands, American Samoa, and the Virgin Islands shall not be less than $67,000 in addition to the amount determined under (3).

(3) In any case in which the total amount appropriated under section 117 for a fiscal year exceeds the total amount appropriated under such section, as in effect on the day before the date of enactment of this paragraph, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100 (c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the allotments under clauses (1)(i)(b), (1)(ii)(b), and (2)(i) and (2)(ii) above by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years)as the amount which is equal to the difference between—

(A) The total amount appropriated under section 117 for the fiscal year for

which the increases in minimum allotment is made, minus

(B) The total amount appropriated under section 117 for such preceding fiscal year,

bears to the total amount appropriated under section 117 for such preceding fiscal year.

For purposes of this announcement, we are assuming a provisional fiscal year 1992 appropriation of $19,500,000. This represents a 24.9 percent increase over the fiscal year 1991 appropriation of $15,614,000. This percent increase is larger than the 5.2 percent Consumer Price Index increase for the fiscal year 1990. The new formula would require a 24.8 percent increase in the minimum allotment (see (2) above); thus, the fiscal year 1992 minimum allotment for the States, the District of Columbia, and Puerto Rico will be $230,547, and for Guam, Northern Mariana Islands, American Samoa, and the Virgin Islands $123,572.

Population figures used for all areas are obtained from the U.S. Department of Commerce and, for States and most other areas, are estimates for the year 1990. Figures for relative per capita income are derived from the U.S. Department of Commerce's "Survey of Current Business" (August 1990) and use the average of per capita income for the years 1988, 1989, and 1990. The data are those published for the 50 States and the District of Columbia; data for the Commonwealth of Puerto Rico are unpublished but were also provided by the Department of Commerce.

Form and Content of Applications

Applications for allotments under this Act, to be submitted by January 3, 1992, shall be considered a request for receipt of allotments for fiscal years 1992, 1993, 1994, and 1995. The assurances required under this section shall remain in effect for the same 4-year period.

A new application and assurances must be submitted within one (1) month of a change in designation of the eligible State system.

Applications for allotments under this Act must be in the form of an SF 424 with attachments from the Governor of the State designating the eligible State system, and required assurances (see application form) signed by the executive director of the eligible P&A system established under part C of the Developmental Disabilities Assistance and Bill of Rights Act. The application must also include a proposed expenditure plan and a statement of the P&A system's priorities for fiscal year 1992 (in accordance with section 105(a)(8) of the Act). Applications shall be submitted to Mr. Bruce Ringler, Chief, Grants Management Branch, National Institute of Mental Health, 5600 Fishers Lane, room 7C–15, Rockville, Maryland 20857.

Additional Terms and Conditions of Support

The allotments are disbursed as formula grants which are subject to Federal cost principles. Eligible systems must comply with all applicable provisions for accounting and fiscal management required under 45 CFR part 74 (45 CFR part 92 for State agencies), and are to be administered in accordance with policies in the PHS Grants Policy Statement (Rev. October, 1990).

In addition to the assurances, each P&A system must meet all other terms and conditions listed under the Act, as amended.

Under section 105(a)(7) of the Act (as amended, 1991), on or before January 1 of 1992, 1993, 1994 and 1995, each P&A system must prepare and transmit to the National Institute of Mental Health (NIMH), and to the head of the State mental health agency, a report describing the activities, accomplishments, and expenditures of the system for each fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system.

Review and Funding Criteria

The NIMH decision to award allotments will be based on a determination that all of the required submissions and attachments described under **Form and Content of the Application** have been included in or with a letter of application. Applications submitted in response to this announcement are not subject to the intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services regulations at 45 CFR part 100.

Receipt of Applications and Schedule for Allocation of Funds

Applications for allotments authorized under this Act should be received in the Grants Management Branch, NIMH, by January 3, 1992 (see above for address). Applications received in response to this announcement shall be considered a request for receipt of allotments for fiscal years 1992, 1993, 1994 and 1995. Awards for each fiscal year will be made subject to reauthorization of the Act and the appropriation of funds. Grantees will be notified annually by the NIMH concerning requirements for receipt of subsequent fiscal year allotments.

If an eligible State system has not made application by January 3, 1992, or in subsequent years has notified NIMH that it does not wish to receive an allotment, NIMH will mail a formal notice to the Governor of the State indicating that no monies will be allotted to that State in that fiscal year and stating that, without receipt of further communication from the State, NIMH will reallocate the funds to which that State was entitled. If no communication from the eligible State system or the Governor is received by NIMH within 30 days of registered receipt of said notice, an announcement will be published in the **Federal Register**, in accordance with section 112 of the Act, stating the Secretary's intention to reallocate. Thirty days thereafter, all undisbursed funds will be reallocated among the eligible P&A systems which have indicated their desire to receive these funds.

Note: A new application, including all required assurances, must be submitted within 1 month of a change in designation of the eligible State system.

NIMH Contact Points

Assistance with respect to the application process may be obtained from Ms. Natalie Reatig, telephone (301) 443–3667, Protection and Advocacy Program, Division of Applied and Services Research, National Institute of Mental Health, room 11C–22, 5600 Fishers Lane, Rockville, MD 20857.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–28344 Filed 11–25–91; 8:45 am]

BILLING CODE 4160–20–M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities for Grants for Podiatric Primary Care Residency Training Programs

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year 1992 Grants for Podiatric Primary Care Residency Training Programs are now being accepted under the authority of section 788(e) title VII of the Public Health Service Act, and extended by the Health Professions Reauthorization Act of 1988.

Public Law 100–607, title VI. This authority expired on September 30, 1991. Comments are invited on the proposed funding priorities described below.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in policy.

Section 788(e) authorizes the award of grants to accredited schools of podiatric medicine and public and nonprofit private hospitals for the purpose of planning and implementing projects in primary care training for podiatric physicians in approved or provisionally approved residency programs which shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care. As noted above, the authorizing legislation limits eligibility to residency programs that are approved or provisionally approved. The Council on Podiatric Medical Education (CPME), the recognized accrediting body for podiatric medicine, uses the term "candidate status" in lieu of "provisional approval." For the purposes of this program "candidate status" will be accepted as meeting the statutory requirement for "provisional approval."

Applicants to this program that are planning to initiate a new podiatric primary care residency program are expected to apply to CPME for candidate status. Grants will only be awarded to applicants that can demonstrate the attainment of candidate status by July 1, 1992. The application for Federal funding must demonstrate, through responses to the program specifications, that an adequate emphasis will be placed on podiatric primary care.

The period of Federal support should not exceed 3 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Podiatric Primary Care Residency Training Program is related to the priority area of Educational and Community-Based Programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its education programs and U.S. Public Health Service programs which provide comprehensive primary care services to the underserved.

The following project requirements and review criteria were established in FY 1989, after public comment and are being extended by the Administration in FY 1992.

Project Requirements

Each project must have:

a. A project director who is employed by the grantee institution and has completed at least one year of podiatric residency training and has at least one year of clinical teaching experience; or is board certified in a recognized specialty area in podiatric medicine and has at least 5 years of clinical teaching experience;

b. Appropriate administrative and organizational plan and appropriate faculty, staff and facility resources for the achievement of stated objectives;

c. A systematic evaluation of the educational program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met;

d. Use of ambulatory care settings where podiatric primary care is practiced and where an adequate portion of the clinical training is conducted;

e. A curriculum which:

1. Is appropriate for the academic level of the trainees and the specific length and nature of the educational program;

2. Supplements any practical (including clinical) experiences with related educational activities; and

3. Includes: A minimum of 20 percent of curriculum time devoted to supervised instruction in ambulatory clinical settings; instruction in behavioral sciences and the development of psychosocial skills and topics; and supervised clinical experience in a family medicine or general internal medicine ambulatory care setting;

f. A sufficient number of residents to assure an adequate collegial environment for the educational program and to enhance cost-efficiency;

g. An adequate number of qualified faculty with training and experience in podiatric medicine, and behavioral sciences and liaison faculty in related program areas for the number of residents in the program. The faculty in the program must be engaged in periodic faculty development activities to improve their teaching skills;

h. Adequate facilities for the conduct of the educational activities and, in particular, have ambulatory care space sufficient to provide an adequate clinical experience for the residents; and

i. A sufficient number of patients with a variety of health care needs to provide the resident with a broad clinical experience.

Review Criteria

The HRSA will review applications based on an analysis of the following factors:

(1) The degree to which the proposed project provides for the project specifications;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;

(3) The degree to which the proposed training program emphasizes training in podiatric primary care settings; and

(4) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanism may be applied in determining the funding of approved applications:

Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

Proposed Funding Priorities for Fiscal Year 1992

It is proposed that funding priorities be given to:

1. Applications which demonstrate substantial clinical training experience in one or more of the following: PHS Act, section 781 Area Health Education Center(s); in areas that meet the criteria for designation as PHS Act, section 332 Podiatric Health Professional Shortage Area(s); and/or a PHS Act, section 329 Migrant Health Center(s), PHS Act, section 330 Community Health Center(s) or State designated clinic/center serving an underserved population.

This priority is designed to implement HRSA's overall strategy to direct services to those most in need.

Section 781(a) (1) authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs.

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities and other public facilities in the States as Health Professional Shortage Areas.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved populations.

2. Applications which are innovative in their health professions education approaches to HIV/AIDS and/or geriatrics.

This priority combines two previously separate priorities to reduce the number of priorities while still demonstrating Federal interest in these areas.

The proposed funding priorities do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect the proposed funding priorities are encouraged to submit applications.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1992 award cycle, this comment period has been reduced to 30 days. All comments received on or before December 26, 1991, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priorities will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays, (Federal holidays excepted), between the hours of 8:30 a.m. and 5 p.m.

Requests for application materials, questions regarding grants policy and business management aspects should be directed to: Mrs. Judy Bowen (D31), Grants Management Specialist, Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6960.

Completed applications should be returned to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C-05, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6817.

The application deadline date is January 3, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget. The OMB clearance number is 0915-0060.

This program is listed in 93.181 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 13, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-28409 Filed 11-25-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Notice of Meeting of the 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, December 5-6, 1991, The Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on December 5 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 December 5 from 9:30 a.m. to recess and on December 6 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: November 1, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91-28295 Filed 11-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Meeting of the Board of Scientific Counselors, NEI

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 9 and 10, 1991, Building 31, NEI Conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 9 from 9 a.m. until approximately 4 p.m. for general remarks by the Institute's Acting Director, Intramural Research Programs, on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on December 9 from approximately 4 p.m. until recess and on December 10 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Immunology. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110 will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated:November 19, 1991.

Sue Feldman,

Committee Management Officer, NIH

[FR Doc.91–28297 Filed 11–25–91;8;45am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Board of Scientific Counselors; Meeting

Pursuant to Public law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 9–11, 1991. The meeting will be held in Building 4, room 433, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 9 from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 2:30 p.m. On December 10 the meeting will be open from 8 a.m. until 10:15 a.m. During the open sessions, the permanent staff of the Laboratory of Immunogenetics, Laboratory of Immunopathology, and the Laboratory of Cellular and Molecular Immunology will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 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 December 9 from 8:30 a.m. until 9 a.m., from 12:30 p.m. until 1:30 p.m., and from 2:30 p.m. until recess, on December 10 from 10:15 a.m. until recess and on December 11 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counsellors, NIAID, National Institutes of Health, Building 10, room 11C103, telephone (301–496–3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health.)

Dated: November 14, 1991.

Sue Feldman,

Committee Management Officer, NIH.

[FR Doc. 91–28291 Filed 11–25–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Board of Scientific Counselors, NICHD; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 6, 1991, in Building 31, room 2A52.

This meeting will be open to the public from 9 a.m. to 12 noon on December 6 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 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 December 6 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including 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.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: November 19, 1991.

Sue Feldman,

Committee Management Officer, NIH.

[FR Doc. 91–28298 Filed 11–25–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Meeting of NIDR Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 5–6, 1991, in the H. Trendly Dean Conference Room, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to recess on December and from 9 a.m. until 1 p.m. on December 6. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 1 p.m. until adjournment on December 6 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the

competence of individual investigators, and similar items, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, building 30, room 132, Bethesda, Maryland 20892 (telephone 301–496–1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: November 1, 1991.

Dr. Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91–28292 Filed 11–25–91; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Biotechnology Information Subcommittee of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biotechnology Information Subcommittee of the Biomedical Library Review Committee on December 17–18, 1991, convening at 8:30 a.m. in the Stanford Inn Conference Room, 531 Stanford Avenue, Stanford, California 94306.

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 for the review, discussion, and evaluation of individual grant applications from 8:30 a.m. to approximately 5 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: October 18, 1991.

Raymond Bahor,

Actg. Committee Management Officer, NIH.

[FR Doc 91–28293 Filed 11–25–91; 8:45 am]

BILLING CODE 4145–01–M

National Library of Medicine; Notice of Meeting of the Biotechnology Information Subcommittee of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a special meeting of the Biomedical Library Review Committee on December 13, 1991, convening at 1 p.m. at The Clarion Hotel Conference Room, 141 W. Sixth Street, Cincinnati, Ohio 45202.

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 for the review, discussion, and evaluation of individual grant applications from 1 p.m. to approximately 5 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health.)

Dated: November 1, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91–28294 Filed 11–25–91; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on January 10, 1992, in the Class Room of the National Library of Medicine, Building 38A, room B1N30B, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. to 3:30 p.m. for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 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 January 10, from approximately 3:30 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: November 19, 1991.

Sue Feldman,

NIH Committee Management Officer, NIH.

[FR Doc. 91–28296 Filed 11–25–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–92–4212–13; N–54981]

Corrected Notice of Realty Action

The Notice of Realty Action published in the **Federal Register** on September 10, 1991 (56 FR 46203; Document 91–21572), is hereby corrected with respect to the legal description for T. 19 S., R. 60 E., section 5. The proper legal description is as follows:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 5, Lots 5, 6, 7, and 8

All other terms and conditions of the Notice continue to apply.

Dated: November 8, 1991.

Patricia L. Hall,

Acting District Manager, Las Vegas, NV.

[FR Doc. 91–28319 Filed 11–25–91; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Notice of Availability of a Final Supplemental Environmental Assessment, a Finding of No Significant Impact, and Receipt of Permit Applications for the Florida Panther Captive Breeding Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Fish and Wildlife Service (Service) has completed the Supplemental Environmental Assessment (Supplement) regarding the establishment and management of a captive Florida panther (*Felis concolor coryi*) population. Copies of the Supplement can be obtained by making requests to the address below. This Notice also advises the public that the Service has determined that issuing endangered species permits for the removal of a limited number of select Florida panthers from the wild population for the establishment and management of a captive population is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the Supplement dated November 1991, the approved Florida Panther Recovery Plan, the Florida Panther Viability Analysis and Species Survival Plan, other pertinent scientific and technical data, and public comments received on the proposal and draft Supplement. Finally, this Notice serves to notify the public that the following applicants have applied for permits to conduct certain activities with the Florida panther. This Notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

The Florida Game and Fresh Water Fish Commission, Tallahassee, Florida (PRT–763741) requests a 2-year permit to take (capture and remove from the wild) a maximum of 6 kittens per year and up to 4 adults the first year and up to 2 adults the second year, to be placed in various Florida zoological facilities for the purpose of enhancement of propagation and survival of the species.

The following Florida zoological facilities request permits to take (harass through husbandry and management activities; blood sampling, anesthetizing for health examinations, etc.) for the purpose of scientific research and enhancement of propagation and survival of the species: Lowry Park Zoo (PRT–763742), Jacksonville Zoo (PRT–763744), Miami MetroZoo (PRT–763740), and White Oak Plantation (PRT–763743). These facilities have applied for permits from the Office of Management Authority as a result of the out-of-court settlement with The Fund for Animals, Inc. The Fund for Animals, Inc., was against the zoos being issued subpermits under the Regional Director's Blanket Permit, as the Service originally intended, since applications for subpermits do not require a 30-day public comment period in the **Federal Register** and, consequently, they would not have an opportunity to comment on the expertise and facilities of the zoos.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203, telephone: 703/358–2104, FAX: 703/358–2281, or by appointment during normal business hours (7:45 am–4:15 pm) within 30 days of the date of publication of this notice. Please refer to the PRT number when requesting a copy of the application(s) and when submitting comments.

FOR FURTHER INFORMATION AND COPIES OF THE SUPPLEMENT CONTACT: Dennis B. Jordan, Florida Panther Recovery Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

SUPPLEMENTARY INFORMATION: The Florida panther (*felis concolor coryi*), with a single population of approximately 30 to 50 individuals, is a critically endangered species. A recent population viability analysis indicated that the existing single population situation provided limited security against extinction, and estimated that given the prevailing demographic and genetic conditions, the species would go extinct in 25 to 40 years. Genetic studies support this projection with limited genetic diversity and inbreeding further compromising population viability. The Florida Panther Interagency Committee has concluded that security against extinction for the Florida panther can only be provided through actions to immediately preserve existing genetic diversity and to significantly increase panther numbers and populations. The Interagency Committee has recommended this security can best be accomplished through the establishment and management of a captive population.

In December 1990, the Service completed a Final Environmental Assessment (Assessment) on the proposed captive breeding program for the endangered Florida panther. The Service evaluated seven potential courses of action in the Assessment in order to identify and select a program that would insure the long-term survival and recovery of the Florida panther in the wild. The Service's preferred alternative in the Assessment was to establish a captive breeding population over a 3- to 6- year period that focused primarily on the capture of a limited number of offspring of key adults (genetic founders) from the wild population. The proposed removal regime would attempt to achieve full genetic representation of the wild population without compromising the integrity of the wild population. The Service determined on December 12, 1990, that the preferred alternative was not a major Federal action significantly affecting the quality of the human environment, and indicated that appropriate endangered species permits to implement the program would likely be issued soon after January 19, 1991.

On January 15, 1991, The Fund for Animals, Inc., and Holly Jensen filed a lawsuit against the Fish and Wildlife Service regarding the proposed captive breeding program and requested a Court injunction that would prevent the issuing of the subject permits. An out-of-court settlement was reached on February 6, 1991, which stipulated that the Service would prepare a Supplemental Environmental Assessment addressing the plaintiff's concerns by November 30, 1991. The settlement also allowed the capture of up to six Florida panther kittens to be held at White Oak Plantation in Yulee, Florida, for future potential captive breeding.

In the Supplement, the Service rigorously explores and objectively evaluates and/or expands its analysis of the following issues: The feasibility of captive breeding Florida panthers; the impacts posed to the remaining wild population from the removal of adults and kittens; the conditioning of captive raised panthers for survival in the wild; the feasibility and impact of reintroduction of captive-bred Florida panthers to the wild; the availability of

suitable habitat for reintroduction of captive-bred panthers both within and outside Florida; reintroduction goals (site selection and target reintroduction dates), release strategies, site evaluation and protection; public attitudes towards reintroduction of panthers; and the possibility of genetic augmentation (i.e., mixing other *Felis concolor* subspecies with Florida panthers for genetic enrichment purposes).

During the preparation of both the Assessment and the Supplement, the Service has consulted with the Florida Panther Interagency Committee; numerous biologists, geneticists, scientists, and managers; received and reviewed written and verbal comments from the public during meetings and official comment periods. Based on the results of this extensive review process, the Service has concluded that Alternative 3 (use of kittens and select adults for establishing a captive population) provides the best overall opportunity to achieve security against extinction and complete representation of the remaining genetic diversity of the existing wild population, with minimal impacts to the integrity of the wild population. Alternative 3 is consistent with meeting the short- and long- range goals of the Population Viability Analysis and Species Survival Plan and the recovery plan. The captive breeding program will represent initiation of an important new task in the overall Florida panther recovery program. However, the captive breeding program will not be a substitute for, or reduce the emphasis on, the many other ongoing and proposed actions to secure and enhance the existing wild population.

Dated: November 19, 1991.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 91-28364 Filed 11-25-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Rocky Mountain National Park, Colorado; Order Adjusting the Boundary of Rocky Mountain National Park to Include Certain Lands

AGENCY: National Park Service, Interior.

ACTION: Boundary Adjustment Order.

SUMMARY: Pursuant to the authority contained in the Act of November 29, 1989, 103 Stat. 1700, 16 U.S.C. 192b-10, and as certain lands authorized for acquisition by the Secretary of the Interior have now been acquired, the boundaries of Rocky Mountain National Park are being adjusted accordingly.

DATES: The effective date of this Order shall be the date of the **Federal Register** publication in which this Order appears.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Division, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225-0287, (303) 969-2610 or FTS 327-2610.

SUPPLEMENTAL INFORMATION: The above-cited Act authorizes the Secretary of the Interior to acquire certain lands adjacent to Rocky Mountain National Park and, upon acquisition, to adjust the park boundary to include such lands within the park. The total acreage of Rocky Mountain National Park will be increased by 469.84 acres by this boundary adjustment.

Subject to valid existing rights, the following described lands are hereby added to Rocky Mountain National Park to be administered in accordance with the laws and regulations applicable thereto:

Township 4 North, Range 73 West, 6th Principal Meridian

Larimer County, Colorado.

Section 10: W½ SE¼;
Section 14: That part of the SE¼ NW¼ and the SW¼ lying west of the westerly right-of-way line of Colorado Highway No. 7;
Section 15: NE¼, N½ SE¼;
Section 23: That part of the NW¼ NW¼ lying west of the westerly right-of-way line of Colorado Highway No. 7,

containing 469.84 acres, more or less.

Dated: November 14, 1991.

Alex Young,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 91-28289 Filed 11-25-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 14, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 11, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Pendley Homestead Historic District, US 89-A, 7 mi. N of Sedona, Sedona vicinity, 91001857.

ARKANSAS

Pulaski County

McGuire, Thomas R., House, 114 Rice St., Little Rock, 91001858

CONNECTICUT

New Haven County

Mount Carmel Congregational Church and Parish House, 3280 and 3284 Whitney Ave., 195 Sherman Ave., Hamden, 91001847
Pistol Factory Dwelling, 1322 Whitney Ave., Hamden, 91001846
Todd, Orrin, House, 3369 Whitney Ave., Hamden, 91001845

Windham County

Sumner-Carpenter House, 333 Old Colony Rd., Eastford, 91001854

GEORGIA

Dougherty County

St. Nicholas Hotel, 141 Flint Ave., 300-310 Washington St., Albany, 91001851

Fulton County

705 Piedmont Avenue Apartments, 705 Piedmont Ave., Atlanta, 91001853

Habersham County

Haywood English Family Log House, GA 115 W of jct. with Habersham Rd., Clarkesville vicinity, 91001852

IOWA

Cedar County

Reichert, John Christian and Bertha Landrock, House, 508 E. Fourth St., Tipton, 91001861

Story County

MacDonald, Gilmour B. and Edith Craig, House (Conservation Movement in Iowa MPS), 517 Ash St., Ames, 91001860

KENTUCKY

Scott County

South Broadway Neighborhood District, Roughly, Georgetown Cemetery, S. Broadway N to College St. and S. Hamilton St. from Clayton Ave. to College, Georgetown, 91001856

MASSACHUSETTS

Hampshire County

Amherst Central Business District, 1-79 Main St., 13-31 N. Pleasant St., 1-79 S. Pleasant St., 1-18 Boltwood Ave., Amherst, 91001859

Worcester County

Gilbertville Historic District

Roughly Main, Church, High, North, Broad and Bridge Sts., Hardwick, 91001848
Hardwick Village Historic District, Petersham, Barre, Greenwich, Ruggles Hill and Gilbertville Rds., Hardwick, 91001849

OHIO

Cuyahoga County

Cleveland East Pierhead Light (Light Stations of Ohio MPS), E breakwater pierhead, entrance to Cleveland harbor, Cleveland 91001855

VIRGIN ISLANDS

St. Thomas Island

Skytsborg, 39 Donningens Gade, Charlotte Amalie, 91001844

WISCONSIN

Ashland County

R. G. STEWART (Shipwreck), Address Restricted, La Pointe vicinity, 91001850

[FR Doc. 91-28290 Filed 11-25-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Guaranty

The Agency for International Development (A.I.D.) has authorized the guaranty of loans for the Republic of the Philippines ("borrower") as part of A.I.D.'s assistance program. The proceeds of these loans will be used to finance shelter-related infrastructure for low income families in the Philippines. At this time, the Government of the Philippines has authorized A.I.D. to request proposals from eligible, lenders for a loan under this program of $20 million dollars ($20,000,000). The name and address of the representatives of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of the Philippines

Housing Guaranty Loan Number: 492-HG-001—$20,000,000.

(1) Attention: Hon. Romeo L. Bernardo, Undersecretary of International Finance, c/o Mr. Ernest Leung, Executive Director, room D-1346, The World Bank, 1818 H Street, NW., Washington, DC 20433. Fax: (202) 477-2966 (Preferred Communication). Telephone: (202) 458-0096 or (202) 477-1234 extension 80096.

and to:

(2) Attention: Ms. Ma. Cecilia G. Soriano, Assistant Secretary of Finance, Department of Finance, International Finance Group, room 416, Five-Story Building, Central Bank Complex, A. Mabini Street, Malate, Manila, Philippines. Fax: (632) 521-0106 or 522-0164 or 521-9495. Telephone: (632) 521-8572 or 59-8279.

Interested lenders should contact the borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should deliver their bids to all of the Borrower's representatives by Wednesday, December 11, 1991, 12:00 noon Eastern Standard Time. Bids should be open for a period of at least 48 hours from the bid closing date. Copies of all bids should be sent simultaneously to the following:

Mr. Earl Kessler, Assistant Director/Asia, RHUDO, USAID-Thailand, APO AP 96520 (Street Address: 37 Soi Somprasong 3, Petchburi Road Bangkok, Thailand). Telex: 87059 RPS TH. Fax: (66) (2) 255-3730 (Preferred Communication). Telephone: (66) (2) 255-3665.

Mr. Harry Dickherber, Chief, Decentralization and Local Development Division, Office of Natural Resources, Agriculture and Decentralization, USAID/Manila, APO AP 96440-8600 (Street Address: 1201 Roxas Blvd. Manila, Philippines). Fax: (63) (2) 522-2512 (Preferred Communication). Telephone: (63) (2) 521-7116 or 521-9054.

Robert Freed, Office of Development Planning, Bureau for Private Enterprise, Agency for International Development, room 3313A NS, Washington, DC 20523-0088. Telex: 892703 AID WSA. Fax: (202) 647-1805 (Preferred Communication). Telephone: (202) 647-6909.

Bids must conform to the following terms: (1) *Amount:* U.S. $20 million. (2) *Term:* 30 years. (3) *Grace Period:* Ten years with repayment amortizing in equal semi-annual installments over the remaining life of the loan.

(4) *Interest Rate:* Alternatives of fixed and variable rate are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index, the 8% U.S. Treasury Bond due November 15, 2021, such rate to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be fixed for each six month period based on the six month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed.

(5) *Prepayment:* Offers should include the terms for prepayment of the loan by the Borrower specifying any cost for exercising the call option.

(6) *Fees:* Offers should specify the contracting fees and expenses. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. All other fees and expenses (e.g. commitment/management fees, if any) should likewise be clearly specified in the offer.

(7) *Closing Date:* As early as practicable, not to exceed 60 days from date of selection of investor.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principle amount thereof.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty Program can be obtained from: Mr. Fred Hansen, Deputy Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA-2, Washington, DC 20523-0214, Telephone: (202) 663-2530.

Dated: November 20, 1991.

Mr. Fred Hansen,

Deputy Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 91-28368 Filed 11-25-91; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-540 and 541 (Preliminary)]

Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-540 and 541 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea and Taiwan of certain welded stainless steel pipes,[1] provided for in subheadings 7306.40.10 and 7306.40.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by January 2, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 18, 1991, by Avesta Sandvik Tube, Inc.; Bristol Metals; Damascus Tubular Products; Trent Tube Division, Crucible Materials Corp.; and the United Steelworkers of America.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in these investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 10, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202-205-3200) not later than December 5, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 13, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Dated: November 20, 1991.

Edward G. Carroll,

Acting Secretary.

[FR Doc. 91-28357 Filed 11-25-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The imported product subject to these investigations consists of welded austenitic (chromium-nickel) stainless steel pipes from the Republic of Korea and Taiwan that are covered by the American Society for Testing and Materials (ASTM) product designation A-312. Although the designation ASTM-312 covers both seamless and welded austenitic stainless steel pipes, only the welded form is subject to these investigations. The petition in these investigations states that the major applications for welded ASTM A-312 pipes are digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of these goods are reported under statistical reporting numbers 7306.40.1000, 7306.40.5010, 7306.40.5030, 7306.40.5050, and 7306.40.5070.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31958]

Cedar River Railroad Co.—Acquisition and Operation Exemption—Certain Lines of Cedar Valley Railroad Co.; Notice of Exemption

Cedar River Railroad Company (CRR), a wholly-owned noncarrier subsidiary of the Chicago Central & Pacific Railroad Company (CCP), has filed a notice of exemption to acquire approximately 117 miles of line and incidental trackage rights in Iowa and Minnesota from Cedar Valley Railroad Company

(CVAR).[1] The involved lines and trackage rights are currently operated by CCP, a Class II railroad which connects with CVAR's system at Mona Junction, IA.[2] CRR intends to consummate the acquisition on, or shortly after, the effective dates of both the instant notice of exemption and the exemption sought by CCP in Finance Docket No. 31959, Chicago Central & Pacific Railroad Company—Continuance in Control Exemption—Cedar River Railroad Company, to continue in control of CRR.[3] Upon consummation, CRR will be a Class III railroad.[4]

The line segments sought to be acquired by CRR include: (1) CVAR's 94.27-mile main line between milepost 0.0 at Mona Junction, IA and milepost 94.27 at Glenville, MN; (2) CVAR's 7.21-mile branch line between milepost 0.0 at Stacyville Junction and milepost 7.21 at Stacyville, IA; and (3) CVAR's 15.8-mile Readlyn Branch line between milepost 276.8 at Waverly Junction and milepost 261.0 near Readlyn, IA. CVAR's incidental overhead trackage rights over the Chicago and North Western Transportation Company's approximate 7-mile line (trackage rights line) between Glenville and Albert Lea, MN are also to be assigned to CRR. The acquisition of the Readlyn Branch line is contingent upon the ability of the National Bank of Waterloo to "cause conveyance of the Branch or such portion thereof to (CRR) by March 13, 1992." [5] CRR intends to operate the 94.27-mile line, the 7-mile trackage rights line, the 7.21-mile branch line, and 2.32 miles of the Readlyn Branch line between milepost 276.8 at Waverly Junction and milepost 274.48 near Waverly, IA. However, CRR "does not at this time seek authority or exemption therefrom" to operate the remaining 13.48 miles of the Readlyn Branch line between milepost 274.48 and milepost 261.00.[6]

Finally, CRR contends that "any trackage on the (Readlyn Branch) property which is presently exempt trackage under 49 U.S.C. 10907 (such as industrial tracks or team tracks) would be acquired by (CRR) as exempt trackage." Sippel letter at 2. Although CRR may acquire exempt trackage without Commission approval, it has not specified what this trackage is and why it is considered exempt.[7] This notice of exemption shall be read simply to embrace the acquisition of the specified trackage.

This transaction is exempt from environmental review under 49 CFR 1105.6(c)(2)(i) and from historic reporting requirements under section 1105.8(b)(1). The transaction will have no effect on historic properties.

Any comments must be filed with the Commission and served on: William C. Sippel, Esq., Oppenheimer, Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, suite 2400, Chicago, IL 60601.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 19, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–28398 Filed 11–25–91; 8:45 am]

BILLING CODE 7035–01–M

[1] Originally filed on October 19, 1991, the notice of exemption was amended, clarified, and corrected in a letter from attorney William C. Sippel received November 4, 1991.

[2] CVAR ceased rail operations on May 22, 1991. In response to the need for continued rail service over its system, the Commission authorized CCP to operate over CVAR's lines as a "Directed Rail Carrier"—uncompensated and without Federal subsidy under 49 U.S.C. 11125(b)(5)—for an initial period of 60 days commencing June 5, 1991. See Directed Service Order No. 1511, *Chicago Central & Pacific Railroad Company—Directed Service—Cedar Valley Railroad Company* (not printed), served June 5, 1991 (as corrected June 12, 1991). On August 2, 1991, we extended the Directed Service Order to January 30, 1992.

[3] CRR's amended notice of exemption became effective on November 11, 1991, 7 days after the amendment was filed. See 49 CFR 1150.32(b). However, the acquisition and operation transaction cannot be consummated unless CCP's petition for exemption in Finance Docket No. 31959 is approved. The Commission will issue a decision on the petition shortly.

[4] The Railway Labor Executives' Association and United Transportation Union (RLEA/UTU) filed protests seeking imposition of labor protective conditions. The Commission has determined, however, that such conditions will not be imposed on this class of transaction unless exceptional circumstances are shown. See Ex Parte No. 392 (Sub-No. 1), Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C. 2d 810, 814 (1986), *aff'd sub nom. Illinois Commerce Commission* v. *I.C.C.*, 817 F.2d 145 (D.C. Cir. 1987). RLEA/UTU do not allege that exceptional circumstances are involved. Accordingly, labor protective conditions will not be imposed.

[5] Because it defaulted on certain loans from the National Bank of Waterloo, CVAR has agreed to transfer "to a buyer acceptable to the Bank the property upon which the Bank had liens, *i.e.*, the lines involved herein." Notice of Exemption, at 3, n. 1. However, ownership of the Readlyn Branch line is currently the subject of a dispute between CVAR and Trains Unlimited, Inc. Letter from William C. Sippel dated November 1, 1991, p. 1.

[6] By decision in Docket No. AB–329 (Sub-No. 1X), Cedar Valley Railroad Company—Abandonment Exemption—In Bremer County, IA (not printed), served January 7, 1991, the Commission granted an exemption permitting CVAR to abandon the involved 13.48-mile segment of its Readlyn Branch line. However, because Iowa Trails Council, Inc., requested interim trail use/rail banking, and CVAR agreed to negotiate, the exemption was made subject to a Notice of Interim Trail Use (NITU) which provided a 180-day trail use negotiating period. By decision served July 8, 1991, the negotiating period was extended to January 2, 1992. Accordingly, unless the NITU expires (which will occur if a trail use agreement is not reached) or is revoked, CRR cannot restore rail service over the 13.48-mile segment. CRR acknowledges that its acquisition of the 13.48-mile segment would be subject to the NITU. Sippel letter, p. 2.

[7] Under section 10907 the Commission does not have jurisdiction to regulate the acquisition of spur, industrial, team, switching, or side tracks if the tracks are located entirely in one State. Initially, CRR stated that the 13.48-mile trail use segment of the Readlyn Branch would be acquired "as exempt trackage under 49 U.S.C. 10907." Notice of Exemption, p. 4. As indicated above, however, that line segment is currently subject to the jurisdiction of the Commission. Mr. Sippel's November 1, 1991 letter corrects CRR's initial statement regarding the status of the Readlyn Branch. However, the letter now claims, without more, that some trackage on that property qualifies as industrial tracks, team tracks, or other exempt trackage under section 10907.

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: NOTICE.

DATE: This addition to the annual list of labor surplus areas is effective November 1, 1991.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW, room N–4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–535–0189.

SUPPLEMENTARY INFORMATION:

Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or

offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 25, 1991, (56 FR 55339).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective November 1, 1991.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on November 1, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Addition to the Annual List of Labor Surplus Areas

(November 1, 1991)

Labor surplus areas	Civil jurisdictions included
Virginia:	
Orange County	Orange County.

[FR Doc. 91-28399 Filed 11-25-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Notice of Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: December 1, 1991, 2 p.m. to 5 p.m., December 2, 1991, 9 a.m. to 3 p.m.

ADDRESSES: Hyatt Regency San Francisco Airport Hotel, 1333 Bayshore Highway, Burlingame, CA, (415) 347-1234.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275-0045.

TYPE OF MEETING: Open.

AGENDA: Call to Order, Roll Call, Chairman's Message, Introduction of Commissioners and Guests, Presentations from Invited Guests.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 91-28313 Filed 11-25-91; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Notice of Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: December 6, 1991, 9 a.m. to 5 p.m.

ADDRESSES: Hawaiian Home Lands Commission, 335 Merchant Street, Honolulu, HI 96813, (808) 586-3800.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275-0045.

TYPE OF MEETING: Open.

AGENDA: Call to Order, Roll Call, Chairman's Message, Introduction of Commissioners and Guests, Presentations from Invited Guests.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 91-28314 Filed 11-25-91; 8:45 am]

BILLING CODE 6820-07-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co.; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Boston Edison Company (licensee) to withdraw its October 24, 1991, application for an amendment to Facility Operating License No. DPR-35, issued to the licensee for operation of the Pilgrim Nuclear Power Station, located in the Town of Plymouth, Plymouth County Massachusetts. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 4, 1991 (56 FR 56425).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to provide temporary extension to the 7-day limiting condition for operation of TS 3.5.3.2 for Reactor Core Isolation Cooling (RCIC) inoperability due to the potential for an undesirable DC bus voltage transient-induced trip of the RCIC inverter.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) The application for amendment, dated October 24, 1991, and (2) the staff's letter, dated November 8, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room, located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 19th day of November, 1991.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–28373 Filed 11–25–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by GPU Nuclear Corporation (the licensee) for an amendment to Facility Operating License No. DPR–16, issued to the licensee for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey. The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing was published in the **Federal Register** on May 20, 1991 (56 FR 23091).

The purpose of the licensee's amendment request was to revise the Technical Specification (TS) to delete the requirement that a liquid effluent radiation monitor be available during liquid effluent discharges from their radwaste facility.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated

By December 26, 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 Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated April 29, 1991, and (2) the Commission's letter to the licensee dated November 19, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. 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 19th day of November, 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–28374 Filed 11–25–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Facility Operating License No. NPF–42 issued to Wolf Creek Nuclear Operating Corporation, which revised the license for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment is effective as of the consummation of the pending merger between Kansas Gas and Electric Company and a subsidiary of Kansas Power and Light Company, provided that the merger is completed on or before March 31, 1992.

The amendment changes the operating license to reflect the transfer of the Kansas Gas and Electric Company (KG&E) possession only interest in the operating license to a successor company resulting from the merger of KG&E with Kansas Power and Light Company (KPL), and the transfer and change of KG&E to a wholly-owned subsidiary of KPL.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues in connection with this action was published in the **Federal Register** on May 13, 1991 (56 FR 22026). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment. The Environmental Assessment was published in the **Federal Register** on October 18, 1991 (56 FR 52302). In addition, a Notice of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation was published in the **Federal Register** on October 24, 1991 (56 FR 55145). No comments or requests for reevaluation were received.

For further details with respect to the action see (1) the application for transfer dated March 28, 1991, (2) the application for amendment dated April 23, 1991, (3) Amendmnent No. 53 to License No. NPF–42, and (4) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66901 and Washburn University School of Law Library, Topeka, Kansas 66621. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V.

Dated at Rockville, Maryland, this 19th day of November 1991.

For the Nuclear Regulatory Commission

William D. Reckley,

Project Manager, Project Directorate IV–2. Division of Reactor Projects—III/IV/V. Office of Nuclear Reactor Regulation.

[FR Doc. 91–28375 Filed 11–25–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Director's Advisory Committee on Law Enforcement and Protective Occupations

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of Open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the second meeting of the Director's Advisory Committee on Law Enforcement and Protective Occupations will be held at the time and place shown below.

DATE: December 11, 1991, 2:30 p.m.

PLACE: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia.

AGENDA: The focus of the December 11th meeting will be to discuss the factors that should be used to distinguish law enforcement and protective jobs from other jobs and to evaluate levels of work among law enforcement and protective jobs.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, Director, Law Enforcement and Protective Occupations Task Force, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Committee orally at the meeting should submit a written request no later than the close of business on December 4, 1991. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–28467 Filed 11–25–91; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Effective Date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the Effective Date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria.

SUMMARY: In Proclamation 6307 of June 24, 1991 (56 **Federal Register** 29787), the President proclaimed that the "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Republic of Bulgaria" would enter into force nondiscriminatory treatment would be extended to products of the Republic of Bulgaria in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with Article XVII of the Agreement. The exchange of written notices of acceptance in accordance with Article XVII of the Agreement took place in Sophia, Bulgaria on November 22, 1991. Accordingly, the Agreement became effective on November 22, 1991, and nondiscriminatory treatment is extended to products of Bulgaria as of November 22, 1991 in accordance with the Agreement and as provided for in Proclamation 6307 of June 24, 1991.

David Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91–28466 Filed 11–25–91; 8:45 am]

BILLING CODE 3190–01–M

Prospective Payment Assessment Commission

Meetings.

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 10–11, 1991, at The Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will meet each day in Executive Rooms 1, 2 and 3 and will convene on both days at 8:30 a.m.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 91–28378 Filed 11–25–91; 8:45 am]

BILLING CODE 6820–BW–M

DEPARTMENT OF STATE

[Public Notice 1524]

The United States Organization for the International Telegraph and Telephone Consultation Committee (CCITT); Meeting

The Department of State announces that the U.S. organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet during a two-day period beginning December 18, (10:30 a.m. to 5 p.m.), in room 1205, and December 19, 1991, (9:30 a.m. to 5 p.m.), in room 1912, at the Department of State, 2201 C Street, NW, Washington, DC.

The agenda for the two-day meeting will include Reports of U.S. CCITT Study Groups A to D; a Report of the Interregional Telecommunications Standards Conference (ITSC), Nice; Report of the CCITT Strategic Planning Groups and their task forces; a Report of CITEL VI and its activities; a Report on the Joint ISDN/Satellite Study Group; and to begin the preparatory activities for the upcoming Xth CCITT Plenary Assembly (Standardization Conference) scheduled for Espoo, Helsinki, Finland, March 1–12, 1993.

Membrs of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting.

Please Note: Persons planning to attend the above meetings must announce this no later than five days before the meeting to the Department of State, Earl S. Barbely (202) 647–0201 (fax 202–647–7407). The announcement must include name, social security number, and date of birth, if you have not already provided this personal data to this office. The above includes government and non-government attendees. All attendees must use the C Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If the document has been mailed, bring only 10 copies.

Dated: November 14, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT, National Committee.

[FR Doc 91–28354 Filed 11–25–91; 8:45am]

BILLING CODE 4710–07–M

[Public Notice 1525]

Shipping Coordinating Committee, Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 AM on January 9, 1992, in room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to review the agenda items for the twenty-third session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW), scheduled for February 24–28, 1992, in London. This SHC meeting will also include a review of the matters to be discussed by the Joint International Maritime Organization and International Labor Organization (IMO/ILO) Group of Experts which will be convened concurrently with the twenty-third session of STW to consider matters relating to the investigation of marine accidents involving fatigue.

Among other things, the items of particular interest on the agenda for the twenty-third session of STW are:

—Fatigue factor in manning and safety.
—Officer of the navigational watch acting as the sole look-out in periods of darkness.
—Special training requirements for personnel on tankers.
—Review of training for masters and chief mates of large ships and of ships with unusual maneuvering characteristics.
—Training and qualifications of Vessel Traffic Service (VTS) operators.
—Training in cargo stowage and securing.
—International eyesight standards.
—Simulator training.
—Drug use and alcohol abuse.
—Minimum training requirements for personnel nominated to assist in emergency situations on passenger ships.
—Training and qualifications for personnel responsible for repairs and maintenance of electrical installations on board ships.
—Requirements for all personnel on mobile offshore units (MOUs) under the 1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).
—Clarification of seagoing service requirements.
—Safety standards for combined pushing tug-barges.
—Revision of the Code of Safety for Dynamically Supported Craft.
—Dispensations issued under article VIII of the STCW Convention.
—Bridge procedures.
—Training and certification of crews of fishing vessels.

The Joint IMO/ILO Group of Experts, to meet concurrently with STW, has been established to draw up a uniform framework of procedures for the investigation of marine accidents which would identify whether, and if so to what extent, fatigue was a contributory factor to such accidents.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), room 1210, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: November 7, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–28353 Filed 11–25–91; 8:45]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Wiley Post Airport, Oklahoma City, OK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Oklahoma City for Wiley Post Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Wiley Post Airport under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before May 7, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is November 8, 1991. The public comment period ends January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Dean A. McMath, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0610, (817) 624–5594. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Wiley Post Airport are in compliance with applicable requirements of part 150, effective November 8, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 7, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Oklahoma City submitted to the FAA on February 8, 1991, noise exposure maps, descriptions and other documentation which were produced during the development of the FAR part 150 Noise Exposure and Land Use Compatibility Program. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Oklahoma City. The specific maps under consideration are Figure 21, Existing Noise Exposure Map—1988 With Existing Land Use on Page 52 and Figure 26, Future Noise Exposure Map—1995

With Future Land Use on page 83 in the submission.

The FAA has determined that these maps for Wiley Post Airport are in compliance with applicable requirements. This determination is effective on November 8, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Wiley Post Airport, also effective on November 8, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 7, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, ASW–600, Fort Worth, Texas 76193–0600

Department of Airports Administration Office, Will Rogers World Airport, Oklahoma City, Oklahoma 73159.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, November 8, 1991.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 91–28360 Filed 11–25–91; 8:45 am]

BILLING CODE 4910–13–M

Meeting of Aviation Security Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held December 6, 1991 from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held December 6, 1991, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting is to discuss current activities that have occurred since the August 2, 1991, committee meeting, such as the training of the Federal Security Managers. Attendance at the December 6, 1991, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at anytime.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC. 20591, telephone 202–267–9863.

Issued in Washington, D.C. on November 15, 1991.

O.K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 91–28361 Filed 11–25–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the following three railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Act contains a provision permitting a railroad which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

Keokuk Junction Railway (KJRY)

FRA Waiver Petition Docket No. HS–91–9

The KJRY seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The KJRY states that it is not its intention to employ a train crew

over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The KJRY provides service over 32 miles of trackage between Keokuk, Iowa and LaHarpe, Illinois.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Mohawk, Adirondack and Northern Railroad Corp. (MHWA)

FRA Waiver Petition Docket No. HS–91–10

The MHWA seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The MHWA states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The MHWA provides service over 63 miles of trackage between Lowville and Newton Falls, New York.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Burlington Junction Railway (BJRY)

FRA Waiver Petition Docket No. HS–91–11

The BJRY seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The BJRY states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The BJRY provides service over 1.5 miles of trackage in Burlington, Iowa.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled a public hearing since facts do not appear to so warrant. If any interested party desires a public hearing, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–90–XX) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before January 6, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on November 19, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–28332 Filed 11–25–91; 8:45 am]

BILLING CODE 4910–06–M

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 app. U.S.C. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3114

Applicants

National Railroad Passenger Corporation, Mr. P.A. Cannito, Vice President-Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

Consolidated Rail Corporation, Mr. W.F. Wulfhorst, NRPC Operations Officer, 15 North 32nd Street, Philadelphia, Pennsylvania 19104–2849.

The National Railroad Passenger Corporation (Amtrak) and the Consolidated Rail Corporation jointly seek approval of the proposed reduction of the limits of Elmora Interlocking, milepost 14.3, near South Elizabeth, New Jersey, on Amtrak's New York to Philadelphia Main Line, New York Division, consisting of the following: The conversion of the No. 1 power-operated crossover, on track "A," to hand-operation with an electric lock; the conversion of controlled signal No. 2R to an automatic distant signal; and the discontinuance and removal of controlled signal No. 2RC.

The reason given for the proposed changes is to resignal Elmora as a modern all-relay interlocking.

BS–AP–No. 3115

Applicant

Burlington Northern Railroad Company, Mr. W.G. Peterson, Assistant Chief Engineer, Control Systems, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the two main tracks, between Shannon, Iowa, milepost 342.0, and Creston, Iowa, milepost 392.0, on the Galesburg Division, Sixth Subdivision, consisting of the removal of 38 automatic signals and the installation of 75 automatic signals.

The reason given for the proposed changes is to equalize track circuit lengths and improve braking distances at the time of coded track installation.

BS–AP–No. 3116

Applicant

Burlington Northern Railroad Company, Mr. W.G. Peterson, Assistant Chief Engineer, Control Systems, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, near Pappio, Nebraska, milepost 4.0, on the Nebraska Division, Fourth Subdivision, consisting of the conversion of the power-operated switch to hand-operation with an electric lock and the discontinuance and removal of three controlled signals and one inoperative approach signal, associated with the removal of the Pappio Control Point.

The reason given for the proposed changes is that the light traffic on this industrial trackage no longer requires a power operated switch.

BS–AP–No. 3117

Applicant

Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, room 920, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed

discontinuance and removal of two controlled signals, numbers R218 and LA218 at Pocatello Junction, Idaho, milepost 216.3, Idaho Division, Nampa Subdivision.

The reason given for the proposed changes is that the signals are no longer necessary due to crossover removal.

BS–AP–No. 3118

Applicant

Soo Line Railroad Company, Mr. C.M. Wencka, Chief Transportation Officer, Soo Line Building, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system on the two main tracks between West Davenport, milepost 194.0, and High Bridge, Iowa, milepost 219.2, a distance of approximately 25.2 miles, on the Southern Division, Davenport Subdivision.

The reason given for the proposed changes is to reduce operating expense and rehabilitation capital requirements by eliminating facilities no longer needed for present-day operations.

BS–AP–No. 3119

Applicant

Burlington Northern Railroad Company, Mr. W.G. Peterson, Assistant Chief Engineer, Control Systems, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, near Cape Girardeau, Missouri, milepost 132.0, on the Springfield Division, Sixth Subdivision, consisting of the conversion of the power-operated switch to hand-operation, the discontinuance and removal of three controlled signals, and the installation of two automatic signals, associated with the removal of the Cape Girardeau Control Point.

The reason given for the proposed changes is that the power-operated switch is not needed at this location as it has only limited use by a local switch engine.

BS–AP–No. 3120

Applicant

Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the traffic control signal system on the Corning Secondary Track between "CP–WD" Interlocking, milepost 4.3 and "CP–334"/"CP–335" Interlockings, milepost 0.0, near Lyons, New York, on the Albany Division, associated with track elimination and realignment, consisting of the following:

1. Discontinue and remove the traffic control signal system on the single secondary track (No. 6) between "CP–WD" Interlocking and "CP–334" Interlocking;

2. Discontinue and remove "CP–WD" Interlocking;

3. Install a spring switch in single secondary track (No. 5) at milepost 0.8, leading to industrial track (No. 6); and

4. Discontinue and remove the traffic control signal system on the single secondary track (No. 5) between milepost 0.8 and "CP–335" Interlocking.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3121

Applicant

Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the automatic block signal system on the Chicago Line, Track No. 7, between "CP 286" Interlocking, milepost 286.6 and "CP 291" Interlocking, milepost 291.5, near Syracuse, New York, on the Albany Division.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3122

Applicants

Metro North Commuter Railroad Company, Mr. V.L. Marlowe, Director—Operating Rules, 347 Madison Avenue, New York, New York 10017.

Connecticut Department of Transportation, Mr. R.P. Rathbun, Director of Rail Operations, P.O. Drawer A, Wethersfield, Connecticut 06109.

The Metro North Commuter Railroad Company and the Connecticut Department of Transportation jointly seek approval of the proposed modification of "Stam" Interlocking, milepost 33.3, near Stamford, Connecticut, on the New Canaan Branch, New Haven Line, consisting of the reduction of the interlocking limits and the removal of controlled signal No. 55E.

The reasons given for the proposed changes are to reduce the requirements of the dispatcher in order to increase his ability to focus on mainline movements and to eliminate an interlocking signal that serves no benefit.

BS–AP–No. 3123

Applicant

Elgin, Joliet and Eastern Railway Company, Mr. G.E. Steins, General Manager, P.O. Box 880, Joliet, Illinois 60434.

The Elgin, Joliet and Eastern Railway Company seeks approval of the proposed discontinuance and removal of the automatic block signal system on the two main tracks between milepost 1.4 and milepost 6.0, near South Chicago, Illinois, on the Lake Front Line, associated with the proposed removal of track No. 2.

The reason given for the proposed changes is the decline of traffic volume on the line, due to permanent changes in steel mill operations served by the railway.

BS–AP–No. 3124

Applicants

Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Norfolk Southern Corporation, Mr. J.R. Strickland, Assistant Vice President-C&S, 99 Spring Street, SW., Atlanta, Georgia 30303.

The Consolidated Rail Corporation (Conrail) and Norfolk Southern Corporation, jointly seek approval of the proposed following signal changes near Cincinnati, Ohio, on the Oasis Branch, Indianapolis Division of Conrail:

1. The discontinuance and removal of the traffic control signal system between "CP Valley" Interlocking, milepost 7.6 and "CP Rendcomb" Interlocking, milepost 7.0, and operate as a secondary track under manual block rules;

2. The discontinuance and removal of "CP Rendcomb" Interlocking milepost 7.0, consisting of the conversion of two power-operated switches to hand-operation, the removal of four controlled signals, and the installation of one inoperative approach signal.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3125

Applicants

CSX Transportation, Inc., Mr. W.J. Scheerer, Chief Engineer-Train

Control, 500 Water Street, Jacksonville, Florida 32202.

Norfolk Southern Corporation, Mr. J.R. Strickland, Assistant Vice President-C&S, 99 Spring Street, SW., Atlanta, Georgia 30303.

The CSX Transportation, Inc. (CSX) and Norfolk Southern Corporation (NS) jointly seek approval of the proposed discontinuance and removal of Carmi Interlocking, milepost 359.5, Carmi, Illinois, on the Chicago Division, St. Louis Subdivision of CSX and on the Kentucky Division of NS, consisting of the conversion of three power-operated switches to hand-operation and the removal of seven controlled and three approach signals.

The reason given for the proposed changes is that the signal facilities are no longer needed for present-day operation.

BS–AP–No. 3126

Applicant

Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, room 920, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of two control points, CPR014, milepost 14.2, and CPR015, milepost 15.3, near Springdale, Texas, on the Red River Division, Dallas Subdivision, consisting of the conversion of two power-operated switches to hand-operation with electric locks, the removal of six controlled signals, and the installation of two automatic signals.

The reason given for the proposed changes is that, due to its short length, the siding is rarely used.

BS–AP–No. 3127

Applicant

Soo Line Railroad Company, Mr. G.M. Short, Director—Signals, Soo Line Building, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed modification of Milwaukee Interlocking, milepost 85.7, on the Southern Division, C&M and Watertown Subdivisions, consisting of the conversion of six power-operated switches to hand-operation, the discontinuance and removal of the five controlled signals, and the relocation of two controlled signals.

The reasons given for the proposed changes are that the subject switches are infrequently utilized and that the changes will release a supply of parts for reuse on the balance of the control system.

Rules, Standards and Instructions Application RS&I–AP–1061 Reconsideration

Applicant

Southeastern Pennsylvania Transportation Authority, Mr. Louis J. Gambaccini, Chief Operations Officer/General Manager, 714 Market Street, Philadelphia, Pennsylvania 19106.

The Southeastern Pennsylvania Transportation Authority (SEPTA) seeks permanent relief from § 236.507 of the Rules, Standards, and Instructions (49 CFR) to the extent that the automatic train control apparatus shall be permitted, when operated, to cause a brake application at the emergency rate instead of the full service rate.

The applicant's justification for relief is that this request is based on 15 months of cab signal train control operations with no adverse effect on the safety or comfort of SEPTA's passengers.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on November 14, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–28333 Filed 11–25–91; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

[Docket S–885]

Lykes Bros. Steamship Co., Inc.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Certain Foreign-Flag Operations

By application dated November 13, 1991, Lykes Bros. Steamship Co., Inc. (Lykes), requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), due to special circumstances and good cause to permit Lykes to charter or own and operate vessels in a foreign-flag service in the trade between the Middle East and the United States Gulf and Atlantic coasts on Trade Route (TR) 18. Without a waiver, the Act prevents the ownership or chartering of foreign flag vessels by contractors receiving operating-differential subsidy (ODS).

In the Middle East, Lykes plans initially to deploy in the service two to four vessels which may be containerships, combination breakbulk/containerships, or a mix of both. The vessels would be slightly larger than the Lykes Express Class or C–5 vessels, configured between 1,200–1,900 TEUs or approximately 700 TEUs if combination vessels, 20,000–30,000 DWT, diesel propelled, with service speed of 17–20 knots. Ports of call would be in the Arabian/Persian Gulf inside the Straits of Hormuz (excluding Iran) and along the Red Sea Coast of Saudi Arabia, including without limitations Jeddah, Dubai, Dammam, and Shuwaikh/Shuaiba, subject to the restrictions stated in a Sailing Agreement (Agreement) with Waterman Steamship Corporation (Waterman), the only other U.S. carrier providing direct U.S.-flag service from the U.S. gulf and Atlantic to the Middle Eastern region. Waterman provides a LASH barge liner service to this region.

In connection with Lykes' proposed foreign-flag service on TR 18, Waterman and Lykes have entered into the Agreement. The Agreement provides for rationalization of the Lykes and Waterman services and permits the parties to consult and agree on the number of sailings each party may make, the ports to be served on such sailings, and the port rotation of such sailings. The Agreement imposes specific restrictions on Lykes' subsidized sailings on TR 18 as well as on the foreign-flag sailings on TRs 18 and 17.

Lykes states that Waterman has indicated that it will not oppose this request for a section 804 waiver, subject to the restrictions stated in the Agreement. However, because the restrictions in the Agreement are applicable only so long as it is in effect and, further, because the Agreement is an agreement only between Waterman and Lykes, neither Lykes nor Waterman see any need to amend Lykes' subsidy authority under ODSA MA/MSB–451 to incorporate the restrictions.

Lykes feels that substantial good cause and special circumstances warrant grant of this application. Lykes' U.S.-flag fleet is aging and there is no prospect of replacement with modern vessels constructed in the United States. Lykes maintains that the proposed service is essential to the maintenance of Lykes' customer bases and the support of its U.S.-flag fleet and American management because it will provide additional cargo, reaffirm Lykes as a service oriented competitor and maintain the cadre of employees that currently operates the company. Lykes contends that revenue earned in this service will contribute to Lykes' overall operating results by allowing it to recover overhead costs that would otherwise have to be shouldered entirely by the U.S.-flag services. Lykes believes that the efficiency of Lykes' shore side operations will be improved. In addition, some portion of the additional cargo that is brought into the Lykes system may move on Lykes' U.S.-flag vessels.

In Lykes' view, these clear benefits, weighed against the absence of any objection from the only competing U.S.-flag operator in the trade, Waterman, sustain a case of special circumstances and good cause.

Section 804(a) of the Act provides that "it shall be unlawful for any contractor receiving operating-differential subsidy under Title VI * * * to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act." Section 804(b) states that this provision may be waived by the Secretary under special circumstances and for good cause shown.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on December 2, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Dated: November 21, 1991.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 91-28417 Filed 11-22-91; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

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

ACTION: Notice.

SUMMARY: This notice corrects the Conforming Products List for instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48854), to reflect the change in location of a breath test manufacturer.

EFFECTIVE DATE: November 26, 1991

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; Telephone: (202) 366-9825.

SUPPLEMENTAL INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published in Appendix D to that notice (49 FR 48864), a conforming products list (CPL) of instruments that were found to conform to the Model Specifications. Amendments to the CPL have been published in the Federal Register since that time.

NHTSA has been advised that National Patent Analytical Systems, Inc., has changed ownership and relocated to Mansfield, Ohio. The BAC Datamaster has not been modified, and still meets the model specifications for such devices. Therefore, the CPL is updated to reflect the change in address of National Patent Analytical Systems, Inc., from East Hartford, CT, to Mansfield, OH. The remainder of the list is current as published in 56 FR 36862.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 91-28474 Filed 11-25-95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-34, No. 2]

Subaru of America; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Subaru of America (Subaru) of Cherry Hill, New Jersey to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that its noncompliance with Federal Motor Vehicle Safety Standard No. 108 is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on July 11, 1991, and an opportunity afforded for comment (56 FR 31685).

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* requires that materials used for side reflex reflectors meet the performance standards in either table 1 or table 1A of SAE Standard 594f, *Reflex Reflectors.* Subaru produced approximately 45,591 1989 and 1990 Station Wagons, 4-Door Sedan, and 3-Door Coupe models from November 1, 1983, through April 10, 1990, which do not comply with the photometric requirements for amber reflex reflectors in SAE Standard J594f. Subaru stated that the noncompliance was caused by a rust preventive paper that was inadvertently left in the metal mold at the start of the molding process on October 29,1988. Upon discovery, the paper was not removed completely, leaving an extremely fine residue on the mold surface. At that time, the measured data had not been plotted on a chart for quality control purposes, therefore, the deterioration of reflex performance was not detected.

Subaru supported its petition with the following arguments: Although the photometric value(s) at some of the test points are below the specifications, according to the vendor's inspection of two failed samples, the sum of measured values of the noncompliance samples is larger than the sum of the minimum requirement values. This point is illustrated in the table below.

Test point	SAE required specification	Noncompliant reflectors	
		Sample #2	Sample #3
H-V	1.25	9.70	9.36
10U-V	7.5	8.60	7.26
10D-V	7.5	7.14	6.77
H-20L	3.75	5.72	6.43
H-20R	3.75	4.58	4.81
Total	33.75	35.75	34.63

The minimum requirement of the photometric value for amber-color reflex reflector (R/R) is 2.5 times greater than that for red R/R. The measured values of the failed samples (amber-colored) pass the minimum requirement of red R/R with sufficient margin.

Subaru was visually unable to differentiate the reflected light of noncompliant reflex reflectors from the reflected light of complying ones at distances of 30m, 60m, and 100m.

The affected vehicles are also equipped with side marker lamps as well as the noncompliance R/R to make other drivers aware of the vehicles' presence.

Subaru is not aware of any accidents or owner complaints as a result of this noncompliance.

Robert F. Schlegel, Jr., P.E., was the sole commenter on the petition. He recommended that the petition be denied because "there are consequences of the noncompliance that negatively affect highway safety." However, this was Mr. Schlegel's sole comment; he did not specify the consequences or provide any other information in support of his recommendation.

The agency has reviewed the petition and the requirements of Standard No. 108. NHTSA does not accept petitioner's argument that, as long as the sum of the values measured exceeds the minimum of the sum of the required minima, the noncompliance is inconsequential. There are only five test points specified by SAE Standard J594f, *Reflex Reflectors,* January 1977, and to ensure the proper design of reflectors, each individual photometric value ought to comply to ensure that the reflex reflectors can be seen from different angles. This is not accomplished by merely meeting the sum of the minimum requirement values.

Subaru has also argued that the failed amber-colored samples pass the minimum requirements for red reflex reflectors by a sufficient margin. However, Standard No. 108 applies different photometric requirements to reflectors, according to their color. Given current manufacturing technology, an amber lens will reflect more light than a red lens. SAE J594f was written to compensate for this inherent bias by making minimum photometric requirements for amber reflect reflectors higher than the photometric requirements for red reflex reflectors.

With respect to Subaru's argument that its vehicles are also equipped with side marker lamps, these lamps operate only when the headlamps are in use, and are not intended to compensate for inadequate performance of reflex reflectors. Reflex reflectors are relevant at times when the headlamps are not in use, such as when the vehicle is parked.

However, NHTSA has carefully considered petitioner's statement that observers could not differentiate between the reflected light of complying and noncomplying reflectors at distances of 30m, 60m, and 100m. As the agency noted in 1990 when it granted inconsequentiality petition filed by Hella, Inc., "a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps." (55 FR 37601, at 37602). The same considerations apply to reflectors as to lamps. The luminous transmittance failures of the Subaru reflectors were all less than 20 percent of the minimum values specified by the standard, and therefore, as Subaru attests, were undetectable by the naked eye.

Accordingly, in consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and the petition of Subaru of America, Inc., is granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: November 20, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-28388 Filed 11-25-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 19, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0046.

Form Number: IRS Form 982.

Type of Review: Revision.

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness.

Description: Internal Revenue Code (IRC) section 108 allows taxpayers to exclude form gross income amounts attributable to discharge of indebtedness in title 11 cases, solvency or a qualified farm indebtedness. Section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	5 hours, 30 minutes.
Learning about the law or the form.	1 hour, 41 minutes
Preparing and sending the form to IRS.	1 hour, 51 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 9,040 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Department Reports, Officer Management.

[FR Doc. 91-28356 Filed 11-25-91; 8:45am]

Billing Code 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: New.
Form number: None.
Type of review: New collection.
Title: Survey of Understanding Taxes High School Program Users.
Description: The data collected will be used to estimate the number of individuals exposed to the Understanding Taxes Program for high school students, and will develop a profile of them. Information will be used to improve future updates of the program, and to justify the distribution of other versions to certain populations.
Respondents: Individuals or households.
Estimated number of respondents: 77,477.
Estimated burden hours per respondent: 42 minutes.
Frequency of response: Other (One-time only).
Estimated total reporting burden: 32,540 hours.
Clearance officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–28355 Filed 11–25–91; 8:45 am]

BILLING CODE 4830–01–M

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Thursday, December 12, 1991 at 9 a.m. at the U.S. Grant Hotel, 326 Broadway, San Diego, CA 92101; Tel.: 1–800–426–0670.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 566–8435.

SUPPLEMENTARY INFORMATION: Agenda items for the fourth meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service on December 12, 1991 will include:

I. Old Business

1. The Customs Modernization Act and the Joint Industry Group legislative initiatives.
2. Update on the North American Free Trade Area Negotiations.

II. New Business

1. Commercial enforcement including problems of transshipment in the textile and apparel industry.
2. Border congestion and other problems and issues specific to the Southwest border.
3. Other new business. (It is anticipated that other agenda items will be added by the meeting date.)

The meeting is open to the public. Persons interested in attending the meeting should notify Dennis M. O'Connell at (202) 566–8435, by Thursday, December 5, 1991.

Dated: November 21, 1991.

John P. Simpson,

Assistant Secretary, Acting (Enforcement).

[FR Doc. 89–28362 Filed 11–25–91; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Democracy in Africa Program—Citizen Exchange Projects

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. The Office of Citizen Exchanges (E/P) announces a request for proposals from public and private not-for-profit organizations in support of seven projects to contribute to mutual understanding between the U.S. and Nigeria and to support Nigerian efforts to foster the development of democracy and a market-guided economy. Through the "Democracy in Africa" program, USIA seeks to promote bilateral relationships through institutional grants for a range of activities, including intensive workshops, internships, on-site consultations and institutional linkages. Institutional grants are for a period of up to two years. Projects should begin on or about May 1992. Subject to the availability of funds, it is anticipated that USIA will provide support for seven institutional projects which are described below.

(A Request for Proposals for programs in the following areas was published separately on October 25, 1991: Affiliations between university departments of mass communications; an exchange on the American experience of democracy; research and exchange on political participation and electoral behavior; research and education in human, civil and political rights; research, publication and discussion of governance and democratization in Nigeria.)

DATES: This action is effective from November 26, 1991 through January 10, 1992.

APPLICATION DEADLINES: All copies must be received at the U.S. Information Agency by 5 p.m. EST on January 10, 1992. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked January 10, 1992, but received at a later date.

ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Bureau of Educational and Cultural Affairs, Office of the Executive Director (E/X), Attn: Citizen Exchanges—Democracy in Africa Program, Project # ____, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency (USIA) announces a program to encourage, through limited awards to not-for-profit institutions, increased private sector commitment to and involvement in international exchanges. Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life. Awarding of any and

all grants is contingent upon the availability of funds.

In the case of each grant, a U.S. not-for profit institution will design and execute the program and select the American workshop presenters. The institution should demonstrate extensive experience and success in managing international exchange programs and working in the specialized area of study. The Nigerian participants will be selected through coordination between the Nigerian partner institutions, overseas personnel of the United States Information Service and USIA. However, USIA and USIS retain final authority in making these selections.

As a component of the "Democracy in Africa" program, these projects are aimed at enhancing the prospects for a successful transition to civilian rule in Nigeria. The establishment of collaborative linkages between eligible American institutions and Nigerian counterpart institutions will foster that goal. Subject to the availability of funds, one or more grants will be awarded to U.S. institutions for each of the following projects:

Summary of Initiative Award Program Ideas

1. The Role of Professional Business Associations in a Democratic System of Government

The Office of Citizen Exchanges of the United States Information Agency (USIA) proposes the development of a two-way exchange project to study the role of professional business associations in a democratic society. The grantee institution would coordinate with Nigerian partner institutions to develop a series of intensive workshops examining how Nigerian business organizations can help promote the process of economic and political liberalization under the terms of Nigeria's new constitution. In preparation for the project, 2–5 U.S. specialists would travel to Nigeria to examine the activities of professional business groups and analyze their potential for contributing to the liberalization process. Following this visit, 2–5 representatives of Nigerian associations would travel to the United States to observe the activities of U.S. business groups and to identify the goals and themes of the workshops to take place in Nigeria. During the final phase, U.S. specialists would conduct the workshops in various localities in Nigeria. The program should establish linkages between Nigerian and U.S. business associations to promote dialogue on issues of common concern.

2. The Impact of Government Regulation on Economic Performance

The Office of Citizen Exchanges of the United States Information Agency (USIA) proposes the development of a two-way exchange program to examine government regulatory policy in Nigeria and its impact on business enterprise development.

The grantee institution would coordinate with Nigerian public policy research centers to develop a series of workshops to address these issues. In preparation for the program, 2–5 representatives of the U.S. institution would travel to Nigeria for consultations with the Nigerian partner institutions, business leaders and other key figures. These discussions would establish the framework for the workshops that will take place in Nigeria. During the second phase, 2–5 representatives of the Nigerian institutions would travel to the United States to study aspects of U.S. regulatory policy and to continue discussions on development of the workshops. During Phase Three, representatives of the U.S. institution would conduct the workshops at various localities in Nigeria. The program should establish linkages between public policy institutes and professional associations in Nigeria and the United States to promote dialogue on key issues affecting business enterprise development during Nigeria's transition to civilian government.

3. Project To Develop Linkages Between Professional Bar Associations in Nigeria and the United States

The Office of Citizen Exchanges of the United States Information Agency (USIA) proposes the development of a two-way exchange project to study the role of professional bar associations in a democratic society. The grantee institution would arrange for U.S. specialists to make presentations at regional and national meetings of the Nigerian Bar Association. The specialists would examine how Nigerian legal institutions can help promote the process of political and economic liberalization under the terms of Nigeria's new constitution. In preparation for the project, 2–5 U.S. consultants would travel to Nigeria to examine the activities of the Nigerian Bar Association and other professional legal groups and analyze their potential for contributing to the liberalization process. Following this visit, 2–5 representatives of Nigerian associations would travel to the United States to observe the operations of U.S. legal groups and make plans for the U.S. specialists' visit to Nigeria. During the final phase, the U.S. specialists would address the Association members at various localities in Nigeria. The project should be designed to establish linkages between professional bar associations in Nigeria and the United States to promote dialogue on issues of common concern.

4. Project for the Professional Development of Public Administrators and Policy Makers at the Local Level

The Office of Citizen Exchanges of the United States Information Agency (USIA) proposes the development of a two-way exchange program for Nigerian local elected officials, public administration officials and their staff. The grantee institution would coordinate with Nigerian partner institutions to develop a workshop program aimed at enhancing public administration at the local level. In preparation for the program, 2–5 U.S. consultants would travel to Nigeria to conduct a needs assessment. Following this visit, 2–5 representatives of the Nigerian institutions would travel to the United States to observe aspects of public administration on the local level and discuss strategies to promote staff development. During the final program phase, a team of U.S. specialists would conduct the workshops in Nigeria. To further promote professional development of public administration officials, the program should establish linkages between public policy research institutions in the United States and Nigeria.

5. Project for Professional Development of Nigerian Journalists

The Office of Citizen Exchanges of the United States Information Agency (USIA) proposes the development of a two-way exchange program for Nigerian print journalists to promote professional development in the areas of economic and political affairs reporting. The grantee institution would coordinate with Nigerian partner institutions to organize a series of workshops in Nigeria and would arrange internships for Nigerian reporters at U.S. publications. The project should be designed to enhance professional journalism skills of print journalists who will provide vital news coverage of the unfolding political and economic developments during Nigeria's transition to civilian government. To further promote professional development, the program should establish linkages between journalism institutions in the United States and Nigeria.

6. The Role of Women's Organizations in Social and Political Affairs

The Office of Citizen Exchanges of the United States Information Agency (USIA) proposes the development of a two-way exchange program for representatives of Nigerian women's organizations. The grantee institution would develop a program to examine the role of U.S. women's groups in American social and political affairs. During the first program phase, a team of 2–5 U.S. specialists would travel to Nigeria for consultations aimed at developing a series of workshops that would take place in Nigeria. During the second phase, 2–5 representatives of Nigerian women's groups would travel to the United States to observe the operations of U.S. counterpart organizations and to work with the grantee institution to further develop the workshops. U.S. presenters would conduct the workshops in Nigeria during Phase Three. The workshops should help enhance the capabilities of women's organizations to contribute to the public debate over social and political issues. The program should establish linkages between Nigerian and U.S. women's organizations to promote dialogue on issues of common concern.

7. The Role of National and State Legislatures in the Development of Public Policy

The Office of Citizen Exchanges of the United States Information Agency (USIA) proposes the development of a two-way exchange program for members of Nigeria's national and state legislatures and their staff. The grantee institution would coordinate with Nigerian partner institutions to develop a series of workshops examining the mechanics of the legislative process and its role in a representative system of government. The project would examine the process of drafting and approving legislation, strategies for effective policy development and public accountability. In preparation for the project, a team of 2–5 U.S. specialists would travel to Nigeria for consultations with representatives of the Nigerian partner institutions to begin development of the workshops. The specialists would also meet with legislators, political leaders, administrators and scholars to formulate a needs analysis. Following this visit, 2–5 representatives of the Nigerian institutions would visit the United States to observe aspects of the legislative process and to further develop the workshops. During the final phase of the program, the U.S. specialists would conduct the workshops in Nigeria. This project should establish linkages to enhance the institutional capabilities of Nigerian public policy research centers to analyze policy issues and promote professional development of legislators and key staff.

Funding and Budget Requirements for all Submissions

Since USIA assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Those budgets including funds from other sources should provide firm evidence of the funds. The required format follows:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.:			
Total	$	$	$

Funding assistance is limited to project costs as defined in the Project Proposal Information Requirements (OMB #3116–0175, provided in application packet) with modest contributions to defray total administrative costs (salaries, benefits, other direct costs including communications expenses, office supplies, office space, and materials not directly developed for program participants), and indirect costs. Total USIA-funded administrative costs for the U.S. grantee institution (and any Nigerian cosponsors) are limited to 22 (twenty-two) per cent of the total funds requested from USIA. The recipient institution may wish to cost-share any of these expenses.

Organizations with less than four years experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount.

Application Requirements

Prior to submission of proposals, detailed concept papers and application materials must be obtained from: The Office of Citizen Exchanges (E/P), United States Information Agency, room 216, 301 4th Street, SW., Washington, DC 20547, Attention: Stephen Taylor—FAX: 202–619–4350, Program Officer—TEL: 202–619–5319.

Inquiries concerning technical requirements are welcome. Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish; a detailed work plan; and summary of how the project is consistent with the purposes of the USIA award program and how it relates to USIA's mission.

2. A concise description of the project, spelling out complete program schedules, agendas and proposed itineraries, who the participants will be, where they will come from and how they will be selected in concert with USIA.

3. A statement of what follow-up activities are proposed; how the project will be evaluated; what groups, beyond the direct participants, will benefit from the project and how they will benefit.

4. A detailed three-column budget.

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280.

6. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).

7. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).

8. For proposals requesting $100,000 or more, Certification for Contracts, Grants and Cooperative Agreements, Form M/KG–13.

9. For proposals requesting $100,000 or more, Disclosure of Lobbying Activities (OMB # 0348–0046).

Note: All required forms will be provided with the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the complete application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Office of Citizen Exchanges, the appropriate geographic area office, and the budget and contracts offices. Eligible proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea

Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. Institution Reputation/Ability/ Evaluations

Institutional recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. Project Personnel

Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. Program Planning

Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise

Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. Cross-Cultural Sensitivity/Area Expertise

Evidence of sensitivity to Nigerian historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. Ability to Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program's objectives.

8. Multiplier Effect

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: November 18, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-28286 Filed 11-25-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 228
Tuesday, November 26, 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).

FARM CREDIT ADMINISTRATION

FARM CREDIT ADMINISTRATION; AMENDMENT TO SUNSHINE MEETING

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on July 9, 1991 (56 FR 31143) of the regular meeting of the Farm Credit Administration Board (Board) schedule for July 11, 1991. This notice is to amend the agenda for that meeting to remove an item from the open session.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agency for July 11, 1991, is amended to remove the following item from open session:

Open Session

2. FCA Assessment Regulations (Final).

Date: November 21, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–28469 filed 11–22–91; 2:45 pm]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on November 18, 1991 (56 FR 58274) of the special meeting of the Farm Credit Administration Board (Board) scheduled for November 20, 1991. This notice is to amend the agenda for that meeting to remove the closed session.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was open to the public (limited space available). The agenda for November 20, 1991, is amended to remove the following closed session:

** Closed Session:*

• Farm Credit Administration Budget Formulation Issues for Fiscal Year 1993.

Date: November 21, 1991.

Curtis M. Anderson,

Secretary,

Farm Credit Administration Board.

[FR Doc. 91–28470 Filed 11–22–91; 2:45 pm]

BILLING CODE 6705–01–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 2, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Proposed purchase of check sorter equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–28533 Filed 11–22–91; 3:59 pm]

BILLING CODE 6210–01–M

---

* Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(9).

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE–91–35

TIME AND DATE: December 5, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification List
4. Petitions and complaints
5. Inv. Nos. 731–TA–487–490, 494 (Final) (Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom)—briefing and vote.
6. Any items left over from previous agenda:

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: November 22, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–28534 Filed 11–22–91; 3:58 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE–91–36

TIME AND DATE: December 12, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification List
4. Petitions and complaints
5. Inv. No. 701–TA–312 (Preliminary) (Softwood Lumber from Canada)—briefing and vote.
6. Any items left over from previous agenda:

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 205–2000.

Dated: November 22, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–28533 Filed 11–22–91; 3:58 pm]

Billing Code 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 25, December 2, 9, and 16, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 25

Tuesday, November 26

10:00 a.m.
Executive Branch Briefing on Indonesia (Closed—Ex. 1)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 2—Tentative

Friday, December 6

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 9—Tentative

Thursday, December 12

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of December 16—Tentative

Monday, December 16

2:00 p.m.
Briefing on Regulatory Application of PRA (Public Meeting)

Tuesday, December 17

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Thursday, December 19

10:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Status of Technical Specifications Improvement Program (Public Meeting)

ADDITIONAL INFORMATION:

By a vote of 4–0 on November 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management-Organization and Internal Personnel Matters" (Closed—Ex. 2), be held on November 20 and on less than one week's notice to the public.

By a vote of 4–0 on November 21, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management-Organization and Internal Personnel Matters" (Closed—Ex. 2 and 6), be held on November 22 and on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: November 21, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–28455 Filed 11–22–91; 2:44 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 56, No. 228
Tuesday, November 26, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 910657-1244]
RIN 0648-AD58

Snapper-Grouper Fishery of the South Atlantic

Correction

In rule document 91-26173 beginning on page 56016 in the issue of Thursday, October 31, 1991, make the following corrections:

§ 646.2 [Corrected]

1. On page 56022, in the second column, in § 646.2, in the definition for *Crustacean trap*, in the last line, after "blue crab" insert "stone crab".

§ 646.4 [Corrected]

2. On page 56023, in the second column, in § 646.4(d), in the tenth line, "of" should read "or".

§ 646.23 [Corrected]

2. On page 56027, in the first column, in § 646.23(e), in the fourth line, "of" should read "or". In the second column, in § 646.23(f), in the third line, "persons" should read "person".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP89-186-052 and CP89-2198-006]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

Correction

In notice document 91-26357 appearing on page 56210 in the issue of Friday, November 1, 1991, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD-366-P]

RIN 0938-ADO1

Medicare Program: Clarification of Medicare's Accrual Basis of Accounting Policy

Correction

In proposed rule document 91-24308 beginning on page 50834 in the issue of Wednesday, October 9, 1991, make the following corrections:

1. On page 50835, in the second column, in the second full paragraph, in the third line from the bottom, "workers;" should read "workers' ".

2. On the same page, under **II.**, in the first paragraph, in the ninth line, "is" should read "in".

PART 413 [CORRECTED]

3. On page 50837:

i. In the first column, under **Authority:**, in the next to last line, "1395(a)" should read "1395l(a)".

§ 413.24 [Corrected]

ii. In the second column, in § 413.24(c)(3)(i)(B), in the sixth line, "there" should read "three".

iii. In the third column, in § 413.24(c)(3)(iii)(A), in the first line, "a" should be removed.

iv. In the same column, in § 413.24(c)(3)(vi), in the third line, "provide" should read "provider".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3336; FR-2980]

Submission of Proposed Information Collection to OMB; Formula Characteristic Report from the Comprehensive Grant Program

Correction

In notice document 91-25514 beginning on page 54879 in the issue of Wednesday, October 23, 1991, make the following correction:

On page 54884, below the illustration, the FR Doc. line was omitted and should read as follows:

[FR Doc. 91-25514 Filed 10-22-91; 8:45 am]

BILLING CODE 4210-33-M

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-02-4212-13; MTM-75701]

Notice of Realty Action: Private Exchange-Montana

Correction

In notice document 91-25138 beginning on page 52278 in the issue of Friday, October 18, 1991, make the following correction:

On page 52278, in the third column, in the second land description, in T. 26 N., R. 31 E., in Sec. 34, in the last line, "NW¼SW¼," should read "NW¼SE¼ ,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-4214-10; WYW 47613]

Termination of Segregative Effect of Withdrawal Application; Wyoming

Correction

In notice document 91-25383 beginning on page 54583 in the issue of Tuesday, October 22, 1991, make the following corrections:

1. On page 54583, in the 3d column, under land description "T. 48 N., R. 93 W.," in the 1st line "Secs. 1-3, 10-5, 22-

24;" should read "Secs. 1-3, 10-15, 22-24;".

2. On page 54584, in the 1st column:

(a) Land description "T. 50 N., R. 63 W.," should read "T. 50 N., R. 93 W.,".

(b) Under land description T. 51 N., R. 94 W., in the 2d line, "Secs. 14-14" should read "Secs. 13-14".

BILLING CODE 1505-01-D

federal register

Tuesday
November 26, 1991

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Fiscal Year 1991 Competitive Discretionary Grant Program: Planning for the Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children; Notice of Issuance of Solicitation for Applications

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Notice of Fiscal Year 1991 Competitive Discretionary Grant Program: Planning for the Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of Issuance of solicitation for applications for planning the Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART II).

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of a Competitive Discretionary Grant Program and announcing the availability of the OJJDP application kit under section 404(b)(2)(D) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (the Act), 42 U.S.C. 5773(b)(2)(D). The program announcement that follows contains specific instructions on competitive program requirements, including eligibility requirements and selection criteria. Following the program announcement is a section that summarizes general application and administrative requirements.

DATE: All applications must be received by 5 p.m. e.s.t., January 7, 1992. Applications received after the deadline date will not be considered.

ADDRESS: Applications must be mailed or sent to: Planning NISMART II, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Barbara Allen-Hagen, Research and Program Development Division, (202) 307–5929, OJJDP, Room 782, 633 Indiana Ave., NW., Washington, DC, 20531.

SUPPLEMENTARY INFORMATION:

Purpose

Pursuant to the Missing Children's Assistance Act, title IV, section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5773(b)(3), OJJDP is required to conduct periodic studies of the incidence of missing children. The first such study was completed in May 1990, providing national estimates of the numbers of children who were abducted by family or non-family members, runaway, thrownaway, lost or otherwise missing during 1988. OJJDP is now preparing to conduct the second comprehensive National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART II) for 1993.

OJJDP invites public and private not-for-profit agencies and organizations, or combinations thereof, to submit applications for the project outlined in this solicitation.

Up to $200,000 has been allocated for this project. One grant will be awarded competitively. The anticipated program and budget period will be 16 months, March 1992—June 1993.

Background

Missing, Abducted, Runaway and Thrownaway Children in America, First Report: Numbers and Characteristics, (NISMART I) published in May 1990, was developed in response to the statutory mandate, section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5773, which requires OJJDP to conduct periodic national incidence studies to determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are victims of parental kidnappings and the number of children who are recovered each year.

The studies funded by OJJDP had two primary objectives: (1) To develop valid and reliable national estimates of the numbers of children reported and/or known to be missing in the course of a given year as well as the number of these children who are recovered; and (2) to establish profiles of missing children and characteristics of the episodes.

The research team that conducted NISMART I developed a comprehensive strategy to respond to the specific requirements of the legislation and to the unique problems of defining and counting these children. They defined five distinct categories of concern in the study. Each involved certain situations in which children were missing or displaced in some manner that put them at risk of harm. The five populations include:

(1) Family Abductions (children abducted by parents or other family members);

(2) Non-Family Abductions (children abducted by strangers and other non-family members);

(3) Runaways;

(4) Thrownaways: and

(5) Lost or Otherwise Missing Children.

The time frame for the studies described below encompassed incidents occurring mainly in 1988. The NISMART studies included the following:

- A Household Telephone Survey of 34,822 randomly selected households yielded 10,367 households with children. These households became the primary sample for that main survey which was supplemented by a number of substudies:
- The Juvenile Facilities Survey of 127 residential facilities, such as boarding schools, group homes, and detention centers, estimated how many children had run away from these facilities. These juvenile facilities were identified by 400 parents or guardians in the household survey who reported having one or more children residing in such a facility for 2 or more weeks.
- The Returned Runaway Study interviewed 85 returned runaways and a sample of 142 nonrunaways. The study was conducted to learn if children's accounts of episodes and nonepisodes matched those of their parents.
- The Network Study tested an alternative survey method for estimating the number of family and nonfamily abductions by asking a sample of respondents about incidents occurring in the households of their relatives.
- A Police Records Study of 83 law enforcement agencies in a national random sample of 21 counties across the U.S. was conducted to estimate the number of Non-Family Abductions.
- The FBI Data Reanalysis was a study of 12 years of homicide data (1976–1987) to determine how many children were murdered in conjunction with possible abductions by strangers.
- The Community Professionals Study was a reanalysis of a survey of 735 agencies having contact with children in a national random sample of 29 counties to determine how many children known to these agencies were abandoned or thrown away.

NISMART results provided two estimates for each of the five categories based on study definitions for "Broad Scope" and "Policy Focal" cases. The Broad Scope category included all those that met the broad definition of a particular type. The Broad Scope definitions generally viewed the incidents in the way the affected families might consider them. Using additional criteria, researchers classified a subgroup of the Broad Scope cases as Policy Focal incidents. A Policy Focal case is generally interpreted from the point of view of police or other social agencies. This category is restricted to episodes of a more serious nature where, without intervention, the

child may be further endangered, placed at greater risk of harm, or would require greater resources to be recovered.

Goals

This project will assist OJJDP in developing its short and long range plans to conduct periodic national studies of the incidence of missing and abducted children, as required by the JJDP Act. In meeting this mandate, OJJDP undertakes these studies to provide crucial information to parents, legislators, judges, police, social workers, and the many other professionals that deal with the problems of missing children. The planning will guide the development of the NISMART II, as well as future studies.

Although NISMART II will build upon the first effort, it may differ in some respects, based on an assessment of NISMART I and the perceived needs for information. However, to measure changes from the initial estimates, comparability of key measures must be assured. OJJDP intends to fund the NISMART II program to collect data for 1993 to allow five-year comparisons with the NISMART I program. To accomplish this goal, NISMART II data collection must begin no later than late 1993.

While the primary emphasis of this project will be on planning for NISMART II, the project must also make long term planning recommendations to fulfill the congressional mandate to conduct periodic studies. An important aim of this planning grant is to develop a fairly broad-based consensus of how to improve the utility of the research, the better to meet the needs of policy makers, child advocates, police, judges and others concerned with these populations.

Objectives

The objectives of this project are to:

(1) Conduct a thorough assessment of NISMART I;

(2) Determine information needs and priorities for NISMART II;

(3) Explore additional data sources and methodologies that may improve NISMART I;

(4) Develop a plan for conducting NISMART II that will allow 5-year comparisons with NISMART I; and

(5) Develop a long term plan which identifies opportunities for intra- and inter-agency collaboration for conducting periodic studies of the incidence of missing and abducted children.

Program Strategy

The organization selected to conduct this research project will be responsible for all aspects of the project, whether carried out directly or contracted to other organizations or individuals.

Program Advisory Board

A core program advisory board of at least three outside experts and three Federal agency representatives will be selected to provide substantive and technical advice to this program. OJJDP also encourages seeking input from additional scholars, practitioners, educators and policy makers. The selection of the external board members will be coordinated with OJJDP for joint approval within the first 30 days of award. The board will meet twice during the course of the program to provide advice, guidance and overall direction of the program and to review project plans, and draft and final reports. The grantee will summarize all such meetings and make them available to interested persons.

Other Research Activities Related to Planning NISMART II

OJJDP is also funding three other programs that are closely related to the activities of the NISMART II Planning Grant. The coordination of activities and the sharing of information are important to the success of this and the other projects. OJJDP has made it clear to each of its research grantees that collaboration and cooperation among the following is required. They are:

- Additional Analysis and Dissemination of NISMART (AAD-NISMART) will support up to three projects to conduct further analysis of NISMART data files and promote the use and dissemination of the data base. This is a 12 month program which will operate concurrently with this planning project. OJJDP anticipates that project staff members and selected advisors on the planning grant will attend at least one of the joint meetings of the three AAD-NISMART projects.
- Testing Incident-Based Reporting Systems for Studying Child Abductions (TIBRS). This 18-month project will study the feasibility of using the new National Incident-Based Reporting System (NIBRS) and other automated State systems to develop estimates of the numbers of child abductions. OJJDP expects that the TIBRS project will provide valuable information for the use of automated police records for NISMART II and for future periodic studies.
- Juvenile Justice Statistics and Systems Development Program (JJSSDP). This program has a broad mandate to identify long range information needs and to help OJJDP set priorities for improving national statistics on children as victims and offenders. This program will monitor the work of the Planning grant and, where appropriate, will offer technical assistance and advice on the broader issues of child victimization which may be addressed by NISMART.

In addition there are a number of ongoing, new, and planned programs that need the attention of the Planning NISMART II project. It will be the grantee's responsibility to become familiar with these programs and identify their protential contributions to the planning of NISMART II.

Project Activities

The major activities to be undertaken under this project are outlined below:

(1) During the start-up of the project, the grantee must:

- Complete the hiring and orientation of project staff;
- Familiarize project staff with relevant NISMART data files;
- Suggest candidates to serve on the program advisory board within the first 30 days of the award; and,
- Convene a meeting of the program advisory board by the third month to review the project workplan.

(2) Conduct a thorough review of the NISMART I experience, identifying strengths and weaknesses of the following aspects of the study and make recommendations for an improved NISMART II:

- Study scope and definitions;
- Research designs and methodologies;
- Sampling designs and procedures;
- Data collection instruments and protocols;
- Methods of quality control of the data;
- Data analysis techniques;
- Documentation of data;
- Quality and utility of study reports, articles and papers; and,
- Dissemination of study results and accessibility of data for secondary analyses.

(3) Identify the full range of information needs to be addressed by NISMART II, including policy and program development needs, particularly for prevention and intervention. The grantee must develop appropriate options for addressing these needs through the core study methods or through special studies. In addition, the grantee must recommend criteria for establishing priorities for incorporating them into the design of NISMART II.

(4) In addition to conducting a literature review, identify additional sources of data, new or previously untapped, and determine how they may prove useful in producing or validating or national estimates or in designing future studies. These additional data sources may include:

- OJJDP Missing Children's Research, Training and Action Programs
- The National Center for Missing and Exploited Children (NCMEC), State Clearinghouses for Missing Children/Persons
- The Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) Missing Persons File
- FBI's National Incident Based Reporting System (NIBRS), which is being explored in depth under a separate grant
- The Bureau of Justice Statistics' National Crime Survey
- National Center on Child Abuse and Neglect (NCCAN) National Study of the Incidence of Child Abuse and Neglect
- Family and Youth Services Bureau, Administration for Children and Family, youth information systems regarding youth served by Federally-funded runaway shelters;

(5) As necessary, test alternative methodologies or approaches to studying different populations. This may include:

- Further testing of data collection methods or instruments to ensure reliability and validity of the data; and/or
- Experimenting with alternative data collection techniques to assure adequate population coverage or to secure the complete enumeration of relevant incidents.

(6) Conduct a planning symposium. Within 6 months of the award, the grantee will convene a symposium to share the findings of its work with selected scholars, policy makers, and practitioners to get their feedback on tentative plans or revisions being considered. The symposium should produce recommendations regarding: Refinement of the core incidence methodology, data analysis and dissemination of study results and data; and identification of key policy and program issues to be addressed by NISMART II.

(7) Prepare a plan for disseminating information about the planning activities and products of this grant and about the launching of NISMART II.

Products

The following products must be prepared and submitted to OJJDP:

(1) Revised Workplan. The grantee must submit a revised workplan which addresses all program objectives and activities and which reflects the input of OJJDP and the program advisors. Included in the workplan should be an outline of anticipated products along with a proposed plan for disseminating the results to the appropriate audiences.

(2) Draft Literature Review. This must include a complete update of the literature on missing, abducted, runaway and thrown-away children. This thorough review of recent literature (1987 to present) will identify any new research findings that may confirm or challenge the reliability or validity of NISMART's findings. It should also identify how NISMART has been used for research, public policy, training, etc. An annotated bibliography should be developed to identify reports and products based on data from NISMART, including journal, magazine and newspaper articles, training films or videos, working papers and dissertations.

(3) Proceedings from the Planning Symposium. A detailed summary of the proceedings from the planning symposium, including any papers, discussion of findings and recommendations must be developed and made available.

(4) NISMART II Draft Plan. This plan must provide sufficient information and guidance to OJJDP to develop a detailed solicitation for applications to conduct the core components of the NISMART II program, which are likely to be a household survey and a study of police records.

(6) Reports on Completed Methodological Studies. Results of any pilot tests regarding recommendations for refinements of methodology for the core study components or supplemental studies must be summarized in a report. (In order to be able to launch the NISMART II program for data collection purposes, it will be necessary to release the NISMART II Solicitation before completion of all work being carried out under this planning grant. Any subsequent refinements to the methodology will be incorporated into the negotiations for the NISMART II award.)

(7) Draft Final Report. A draft final report shall be submitted to OJJDP and project advisors. The report will contain a final literature review, a detailed summary of the work undertaken during the course of the project, and the NISMART II planning document. It must explain all major decisions for NISMART II, and present recommendations for long-term planning and inter- and intra-agency initiatives to facilitate the conduct of periodic studies.

(8) Final Report. In the final report, the grantee will incorporate modifications recommended by OJJDP and the project advisors, as appropriate.

Project Timelines

The following timelines are outlined and must be adhered to if OJJDP can expect to launch NISMART II in time to collect data for 5-year comparisons with NISMART I.

Tentative Schedule for NISMART II Planning Grant

1991

November—Public Solicitation for Planning Project

1992

January—Applications are due
March—Award NISMART II planning grant
May—Hold advisory board
June—Submit revised workplan
September—Hold Planning Symposium
October—Submit Symposium Proceedings
November—Submit draft Plan for NISMART II for OJJDP review and approval
December—OJJDP issues Solicitation for NISMART II

1993

February—Applications are due for NISMART II
March—Submit draft final report, including completion of pilot tests and long term recommendations for NISMART
May—Finalize and submit all products
May—OJJDP awards NISMART II
August—Submit OMB package for household survey to OJJDP
August through November—Pretest and refine instruments and procedures
November—OMB Approval
December—Begin data collection (one year reference period of November '92—December '93)

1994

June—Conclude data collection on household survey (May 1993—June 1994)
September—Conclude police records study and other sub-studies.

1995

January—Produce 2nd Report on Numbers and Characteristics

Eligibility Requirements

OJJDP invites applications from public agencies and private not-for-profit organizations. Pursuant to the provisions

to title IV (The Missing Children's Assistance Act) of the 1974 juvenile Justice and Delinquency Prevention Act, as amended, 42 U.S.C. 5775, applications will not be accepted from for-profit agencies. Applicants must demonstrate sufficient experience in planning and conducting research and data analysis to complete this project. Extensive knowledge of survey research methods is essential. The successful applicant must have experience in planning, designing and carrying out research that presents difficult challenges for conceptualizing the research, defining and measuring the phenomenon, administering the study itself and conducting data analysis. The organization must have personnel with the necessary communications skills and organizational ability to carry out this planning project effectively and in a competent and timely manner. Further, applicants must demonstrate adequate substantive knowledge in the areas of missing children, child victimization or the study of other rare and sensitive phenomena (such as crime victimization, adoption, AIDS) which require special study methods to produce reliable, valid data. Applicants must also have an understanding of related law enforcement and social services operations and an understanding of administrative records research.

The successful applicant chosen for the NISMART II Planning Grant will be eligible to compete for the subsequent solicitation to conduct NISMART II. The planning project must be carried out in such a way that information and reports developed during the course of this program are made available to all interested parties. The planning grantee will not be involved in the development of the solicitation or statement of work.

Applicants must demonstrate the management capability, fiscal integrity and financial responsibility to carry out this project. This includes but is not limited to having an acceptable accounting system with sufficient internal controls, compliance with grant fiscal requirements, and the capability to implement a project of this nature effectively. Applicants who fail to demonstrate their capability to manage this program will be ineligible for funding consideration.

Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applications must include a project summary, a budget narrative, and a program narrative.

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure that OJP Forms 4000/3 and 4061/6 are properly executed.

The project summary may not exceed 250 words. It must be clearly marked and typed single-spaced on a single page. Applicants should take care to write a description which accurately and concisely reflects the proposal.

The program narrative must be typed double-spaced on one side of a page only. The program narrative may not exceed 60 pages and must include all items indicated in the *Selection Criteria* section of this solicitation. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, résumé, and supporting charts or graphs).

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate its acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications which include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. The contractor may not be involved in the development of the statement of work. The applicant must provide sufficient justification for not offering for competition the portion of work proposed to be contracted.

The following information must be included in the application Program Narrative (Part IV of SF 424):

(1) Organizational Capability: The applicant must demonstrate that it is eligible to compete for this grant on the basis of eligibility criteria established in this solicitation.

—Organizational Experience: The applicant must concisely describe its organizational experience with respect to the eligibility criteria specified in the Eligibility Requirements Section, above. Each applicant must demonstrate how its organizational experience, current capabilities, including its survey research design and implementation experience, will enable it to achieve the goals and objectives of this initiative. Each applicant should highlight significant organizational accomplishments which demonstrate its responsiveness to the needs of the field, reliability in terms of producing quality products in a timely fashion.

—Project Staffing: The applicant must provide a list of key personnel responsible for managing and implementing the program. Each applicant must present detailed position descriptions, qualifications and selection criteria for staff positions, whether they are salaried staff or staff hired by contractor(s) of the grantee. In addition, if key functions or services are to be provided by consultants on a contractual basis, the applicant must indicate the individuals to be hired for specific tasks with evidence of their commitment to serve, or the specific skills that would be needed to perform these tasks and the means of acquiring them. Résumés must be provided and submitted as appendices to the application. Each applicant must demonstrate that the proposed staff complement has the requisite background and experience to accomplish the major responsibilities outlined in the Program Strategy, above. Each applicant should highlight significant accomplishments of the proposed staff which relate to their respective roles in the project. In addition, the percentage of each staff person's time or number of hours committed to the project must be clearly indicated in the budget narrative.

The successful applicant will be required to hold two program advisory board meetings, plus a planning symposium. The first advisory board will be held no later than the third month, the planning symposium no later than the sixth month, and the final advisory board meeting between the 14th and 15th month. The advisors will provide advice on the direction of projects' activities, discuss the appropriateness of specific methods for achieving program goals and objectives, discuss problems, and provide options for further activity.

—Financial Capability: In addition to the assurances provided in Part V, Assurances, of the SF 424, the applicant organization must also demonstrate that it has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Other applicants may be requested to submit this form. All questions are to be answered (Section C.I.B. note). The CPA certification is required only of those applicants who have never received Federal funding or have not received funding within the last five years.

(2) Program Strategy and Goals: The applicant must demonstrate its understanding of the goals and objectives of the overall program and articulate specific approaches to implementing the program strategy outlined in this solicitation. The applicant must provide a specific implementation plan that covers all activities and includes expected data for delivery of products to OJJDP. These and any additional activities proposed must clearly support the program objectives.

(3) Program Implementation Plan: The applicant must develop a detailed time-task plan for the grant period, clearly identifying major milestones related to each phase. This must include designation of organizational and staff responsibility, and a schedule for the completion of the tasks and products identified in the Program Strategy.

(4) Program Budget: The applicant shall provide a 16-month budget with a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the bases for these costs must be well documented in the budget narrative. The applicant must also budget for the costs of convening two project advisory board meetings to be held in Washington, DC, during the project period, the Planning Symposium, and participation of staff and selected advisors in the AAD-NISMART joint project meeting.

Selection Criteria

All applications received will be reviewed in terms of their responsiveness to this solicitation and the specific program application requirements set forth in this solicitation. Applications will be evaluated by a peer review panel. The peer reviewers will be directed to focus their evaluations on each applicant's response to the detailed program requirements specified in this solicitation and the selection criteria outlined below. The results of the peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and selecting the application for funding. The award will be made by the OJJDP Administrator.

Applications will be rated according to the specific selection criteria below.

(1) The problem to be addressed by the project is clearly stated. (10 points)

Each applicant must describe the problem addressed in this program in a clear problem statement. The applicant must demonstrate an understanding of the substantive and technical issues related to planning for NISMART II and for future periodic studies. It must also demonstrate an understanding of the needs of the consumers of information from NISMART II.

The applicant must also formulate specific, clear research questions that will guide the planning effort. These must directly address the goals of this program.

(2) The objectives of the proposed project are clearly defined. (10 points)

The applicant should provide a clear and definitive statement of the applicant's understanding of the goals and overall objectives of the project.

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives. (35 points)

The overall program design will be assessed based on its appropriateness, conceptual clarity, and technical adequacy. The design must conform to the program strategy described above. The applicant must provide a preliminary plan for carrying out the activities and developing the products outlined in the Program Strategy section of this solicitation. The proposed plans must clearly relate to the research questions and the applicant must demonstrate the appropriateness of the approaches for achieving the project objectives and goals.

(4) The project management structure is adequate to the successful conduct of the project. (15 points)

The management of the project must be consistent with the project goals, and the tasks described in the application. The program implementation plan will be evaluated to determine:

—Adequacy and appropriateness of the project management structure and activities specified in the project implementation plan;

—The extent to which the applicant has demonstrated in the time-task plan and program design that it will complete the major milestones of the project on time.

—Evidence of commitment to collaboration and cooperation with other related research projects.

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (25 points)

Both the personnel of the organization as well as the technical capabilities of the organization must be sufficient to accomplish the tasks of the project.

—Staffing and qualifications of staff and consultants identified to manage and implement the program must be adequate. (15 points)

Staff members must demonstrate that they have sufficient substantive and technical experience (see Eligibility Requirements). The clarity and appropriateness of position descriptions, required qualifications and staff selection criteria relative to the specific functions set out in the project implementation plan must also be demonstrated.

—Organizational Experience. (10 points)

The organization must demonstrate, based on its past experience and current capabilities, that it has adequate management and personnel resources to ensure the successful completion of the project. Applicants must include all information required under Application Requirements of this solicitation to demonstrate the financial capabilities of the organization.

(6) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed to be undertaken. (5 points)

The proposed costs must be complete, appropriate, and reasonable to the activities of the project. All costs should be fully justified in a budget narrative. No additional consideration will be given for cost savings attributed to an organization submitting more than one proposal.

Award Period

The program and budget period will be 16 months.

Award Amount

Up to $200,000 has been allocated for this program. One grant will be awarded

competitively. This announcement falls under number 16.543 of the Catalog of Federal Domestic Assistance, "Missing Children's Assistance." (This number and title are provided for completing Block 10 of the SF 424 Application for Federal Assistance.)

Due Date

Applicants must submit the original, signed application (Standard Form 424) and two copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Applications must be received by mail or delivered to the Office of Juvenile Justice and Delinquency Prevention by 5 p.m. e.s.t., January 7, 1992. Those applications sent by mail should be addressed Planning NISMART II, Research and Program Development Division, room 782, 633 Indiana Avenue, NW., Washington, DC, 20531. Delivered applications must be taken to the address listed above between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

NISMART References—Materials and Products

The following is a listing of reference materials and products produced as a result of NISMART I. Copies of reports, articles and relevant documentation can be obtained by contacting the AAD-NISMART, Program Manager, 202/307-5929. Questions regarding the reports or about this solicitation should also be directed to her. Copies of the data tapes and electronic documentation can be obtained from the National Criminal Justice Data Archive by contacting the Assistant Archival Director, at 313/763-5010.

Reports

Missing, Abducted, Runaway and Thrownaway Children in America First Report: Numbers and Characteristics, National Incidence Studies. David Finkelhor, Ph.D., Gerald Hotaling, Ph.D., Andrea Sedlak. May 1990.

National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART) Definitions. David Finkelhor, Ph.D., Gerald Hotaling, Ph.D., Andrea Sedlak. November 1989.

Household Survey Methodology. Andrea J. Sedlak, Ph.D., Leyla Mohadjer, Ph.D. and Valerie Hudock. March 1990.

Police Records Study Methodology. Andrea J. Sedlak, Ph.D., Leyla Mohadjer, Ph.D., JoAnne McFarland, M.S.W., and Valarie Hudock. August 1990.

Guide to Sample Weights Using NISMART Data. Gerald Hotaling, Ph.D. June 1991.

Returned Runaway Study Methodology. Gerald Hotaling, Ph.D.

Juvenile Facilities Study Methodology. Gerald Hotaling, Ph.D.

Community Professionals Study Methodology. Andrea Sedlak, Ph.D.

NISMART Data tapes, Documentation and Codebook, and SPSS Export files. 34 separate data files; hard copy 1,700 pages.

Articles and Papers

"Stranger Abduction Homicides of Children: Preliminary Estimates". JJDP Bulletin January 1989.

" 'Missing Children': Found Facts" Robert W. Sweet, Jr., November/December 1990. NIJ Reports No. 222.

"Children Abducted by Family Members: A National Household Survey of the Incidence and Episode Characteristics". David Finkelhor, Ph.D., Gerald Hotaling, Ph.D., Andrea Sedlak. November 1990. Draft. Forthcoming Journal of Marriage and the Family, Summer 1991.

"The Abduction of Children by Strangers and Non-Family Members: Estimating the Incidence Using Multiple Methods." David Finkelhor, Ph.D., Gerald Hotaling, Ph.D., Andrea Sedlak. December, 1990.

"How Many Runaways? Evidence from a National Household Survey." David Finkelhor, Ph.D., Gerald Hotaling, Ph.D., Andrea Sedlak. June 1991.

Video

"Missing Children: Missing Facts", Office of Juvenile Justice and Delinquency Prevention (OJJDP)

General Application and Administrative Requirements

Eligible Applicants

Applications are invited from eligible agencies, institutions, or individuals, public or private. Private-for-profit organizations.

In order to be eligible for funding consideration, applicants must demonstrate that they have the management and financial capability to implement effectively a project of this size and scope.

Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and budget narrative. All applications must include the information required by the specific solicitation as well as the Standard Form 424.

Applications that include proposed non-competitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of $25,000.

Private, nonprofit applicants who have not previously received OJP funds are required to submit a copy of the Office of Justice Programs, Accounting System Financial Capability Questionnaire (OJP Form 7120/1) before a final award can be made.

Applicants who are receiving other funds in support of any of the proposed activities should list the names of the other organizations which are or will expect to provide financial assistance to the program. The applicant must provide the title of the project, the name of the public or private grantor, the amount to be contributed during this program period, and a brief description of the program.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

To comply with Executive Order 12373, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

Application Review Process

Applications will be initially screened to determine if the basic eligibility requirements have been met (e.g., an application must include a completed and signed Form 424, including a budget with narrative).

Applications will be reviewed by a panel of experts who will make recommendations to the Administrator. The panel will assign numerical values in rating competing applications based on the point distribution in the Selection Criteria for each specific program. Peer reviewers' recommendations are advisory only and the final award decision will be made by the administrator. Those applications receiving a score of 55 or higher will be eligible for funding consideration, provided that necessary programmatic and budgetary revisions are successfully negotiated.

Evaluation

OJJDP requires that funded programs contain plans for continuous self-assessment to keep program management informed of progress and results. Many funded projects will be considered for participation in independent evaluations initiated by OJJDP. Project management will be expected to cooperate fully with designated evaluators.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. Additional information is contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual includes information on allowable costs, methods of payment, audit requirements, accounting systems and financial records.

Civil Rights Requirements

Section 809(c)(1) of the Omnibus Crime Control and Safe Streets Act (OCCSSA) of 1968, as amended, 42 U.S.C. 3789d(c)(1), applicable to OJJDP funded programs and projects under section 292(b) of the JJDP Act, 42 U.S.C. 5672(b), provides that no person in any State shall on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title. Recipients of funds under the Act are also subject to the provisions of title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E and G. Upon request, applicants shall maintain such records and submit to OJJDP or OJP timely, complete, and accurate information regarding their compliance with the foregoing statutory and regulatory requirements.

In the event a Federal or State court or a Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

Drug-Free Workplace

Title V, section 5153 of the Anti-Drug Abuse Act of 1988 provides that all grantees of Federal funds, other than an individual, shall certify to the granting agency that it will provide a drug-free workplace by:

- Publishing a statement notifying employees that the unlawful manufacturing, distribution, dispensation, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- Establishing a drug-free awareness program to inform employees about:

—The danger of drug abuse in the workplace;
—The grantee's policy of maintaining a drug-free workplace;
—Any available drug counseling, rehabilitation and employee assistance programs; and
—The penalties that may be imposed upon employees for drug abuse violations.

- Making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement of notification prohibiting controlled substances in the workplace.
- Notifying the employee that as a condition of employment in such grant, the employee will:

—Abide by the terms of the statement; and,
—Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

- Notifying the granting agency within 10 days after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction.
- Imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted.
- Making a good faith effort to continue to maintain a drug-free workplace.

The U.S. Office of Management and Budget, in collaboration with other Federal executive agencies, including the Department of Justice, has developed regulations to implement the Drug-Free Workplace Act of 1988, 28 CFR part 67, subpart F.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A-128, "Audits of State of Local Governments," which establishes regulations to implement the Act. OMB Circular A-128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to OJJDP grantees.

OMB Circular A-133 outlines the requirements for institutions of higher education, hospitals and other nonprofit organizations to have audits performed.

Governmentwide Debarment and Suspension (Nonprocurement)

This Subpart of 28 CRF part 67, provides that executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and non-financial assistance and benefits. Debarment or suspension of a participant in a program by one Agency has governmentwide effect. It is the policy of the Federal Government to conduct business only with responsible persons, and these guidelines will assist agencies in carrying out this policy.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction (OJP Form 4061/1). All direct recipient grantees must complete an OJP Form 4061/1 prior to entering into a financial agreement with subrecipients. This requirement includes persons, corporations, etc. who have critical influence on or substantive control over the award. The direct recipient will be responsible for monitoring the submission and maintaining the official subrecipient certifications.

Certification Regarding Debarment, Suspension, Ineligibility and Other Responsibility Matters—Primary Covered Transactions (OJP Form 4061/6). Certifications must be completed and submitted by grantees of categorical awards to a grantor agency program officer during the application stage.

Disclosure of Lobbying Activities

Section 319 of Public Law 101-121, 103 Stat. 750 prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan or a Federal commitment to insure

or guarantee a loan, to disclose lobbying. The term "recipient," as used in this context, does not apply to any Indian tribe or to a tribal or Indian organization.

A person who requests a Federal grant, cooperative agreement or contract exceeding $100,000 is required to file a written declaration with OJP. The declaration shall contain:

• A certification that addresses payment made or to be made with both Federal or non-Federal funds for influencing or attempting to influence persons in the making of Federal awards.

• Disclosure of Lobbying Activities" must be submitted if payments were made with non-Federal funds and must contain the following information with respect to each payment and each agreement:

—Name and address of each person paid, to be paid or reasonably expected to be paid;
—Name and address of each individual performing the services for which payment is made, to be made or reasonably expected to be made; and
—The amount paid, how the person was paid and the activity for which the person was paid, is to be paid or is reasonably expected to be paid.

• Copies of certification and disclosure of lobbying activities, as outlined above, received from subgrantees contractors or subcontractors under a grant, cooperative agreement or contract for Federal subgrants exceeding $100,000.

A subgrantee, contractor or subcontractor under a grant, cooperative agreement or contract, who requests or receives Federal funds exceeding $100,000 is required to file a written declaration, as described above, with the person making the award.

A declaration must be filed at the end of each calendar quarter in which there occurs any event which materially affects ($25,000 or more) the accuracy of the information contained in any declaration previously filed for a grant, cooperative agreement, contract, subgrant or subcontract. These declarations shall be filed as follows:

—Grant, cooperative agreement and contract recipients shall send their amended declarations and copies of amended declarations for Federal subgrants to the Office of the Comptroller not later than 30 days after the end of each calendar quarter.
—Subgrantees, contractors or subcontractors under a grant, cooperative agreement or contract shall send their amended declarations each quarter to the person who made their subgrant.

Declarations are also required for extensions, continuations, renewals, amendments and modifications exceeding $100,000.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Suspension or Termination of Funding

OJJDP may suspend, in whole or in part, or terminate funding for a grantee for failure to conform to the requirements or statutory objectives of the Act. Prior to suspension of a grant, OJJDP will provide reasonable notice to the grantee of its intent to suspend the grant and will attempt informally to resolve the problem resulting in the intended suspension. Hearing and appeal procedures for termination actions are set forth in the Department of Justice regulation at 28 CFR part 18.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 91-28382 Filed 11-25-91;8:45am]

BILLING CODE 4410-18-M

federal register

Tuesday
November 26, 1991

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

RIN 1029-AB30

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is amending its bonding regulations to require a written affirmation of the completion of each phase of land reclamation when bond release for that phase is being sought. The regulations are being amended to help provide additional assurance and evidence that all applicable reclamation activities have been accomplished in accordance with the regulatory program and the individual's approved permit.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: John Mosesso, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343-1480 (commercial and FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule
III. Response to Comments
IV. Procedural Matters

I. Background

Current OSM regulations at 30 CFR 800.40 require that a permittee, when applying for a release of all or part of a performance bond, describe in a newspaper advertisement, the nature, extent and results of the reclamation work for which he is requesting bond release. In this requirement, it is implicit that all reclamation requirements of the regulatory program and the individual mining permit have been met. However, OSM believes that better reclamation can be assured with an explicit statement regarding reclamation that has been completed. The rule was proposed on September 25, 1990 (55 FR 39240) and the comment period closed November 26, 1990.

II. Discussion of Final Rule

Both section 519 of the Surface Mining Control and Reclamation Act of 1977 (the Act) 30 U.S.C. 1269, and the permanent program regulations (30 CFR 800.40), require that all reclamation requirements be completed before a permanent program bond can be fully released. However, neither the Act nor the regulations require an explicit written statement by the permittee that all reclamation requirements specified in his permit have been completed. This rule would require such a statement as part of the bond release application. The notarized statement would increase the importance of the bond release request and would document the reclamation evolution of a site. It would be especially useful in cases where the release involved only a phase or increment of an operation. This certification would become part of the permit file maintained by the regulatory authority and would thereby help dispel issues regarding previously completed and released reclamation. Further, it would be of great value to individuals charged with processing bond release applications. Most importantly, the certification would serve as a written record indicating that the permittee had examined the requirements of his permit and investigated the nature and extent of reclamation. It would specify that all applicable reclamation responsibilities had been completed. Such a statement would, at the final bond release stage, provide additional evidence of the fact that the operation is completed and has met all reclamation requirements.

III. Responses to Comments

Comments were received from State regulatory agencies, the coal industry and environmental organizations. The public comment period for the bond release certification rule opened September 25, 1990 and closed November 26, 1990. A total of 11 commenters filed written statements resulting in over 41 comments. The reasons given in the preamble to the proposed rules for the changes from prior rules are incorporated into this document where applicable.

Approximately one third of the commenters generally favored the proposed rules and agreed with OSM that the documentation provided by a notarized statement would be helpful at time of final bond release of the entire operation. This would be especially important when various size increments have gone through Phase I and II bond release at different times over the permit term. One commenter supporting the amendments noted that the responsibility for assuring that all requirements have been met should not solely be the responsibility of the regulatory authority. The commenter went on to explain that states find it difficult to maintain an institutional knowledge of constantly changing reclamation plans and requirements because of the high turnover rate of personnel. OSM believes that the certification statement will be an additional piece of information to assist the states in evaluating revised reclamation plans when a bond release application is received, especially during periods of staff transition.

Two commenters recommended that the certificate should demonstrate that the permittee has met all applicable Federal standards. OSM agrees only to the extent that the applicant must certify that applicable reclamation standards have been satisfied. In primary states, this will be the state program standard.

One commenter suggested that to prevent false and self-serving certification, the statement should not only be notarized, but sworn to as an affidavit under penalty of perjury. OSM agrees with the commenter that false certification should be discouraged. No need exists, however, to require the filing of a sworn affidavit. The filing with OSM or a regulatory authority of a false certification, even if not sworn, would be violative of law and subject to appropriate sanction. Thus the final rule discourages false filings.

Two commenters noted that neither the Act nor the regulations require a notarized statement for bond release. Both section 519 of the Act, 30 U.S.C. 1269, and the permanent program regulations (30 CFR 800.40), require that all reclamation requirements be completed before a permanent program bond can be fully released. OSM believes that it is prudent to require a permittee to provide an explicitly written statement, certifying that all applicable reclamation activities have been accomplished at the time of bond release request. The requirement for a notarized statement would increase the importance of the bond release request and document the reclamation evolution of a site. The general enabling provisions of section 201(c) and section 501 of the Act, 30 U.S.C. 1211(c) and 1251, provide the Secretary with ample authority to promulgate and publish rules imposing such requirements.

Several commenters noted that the State or Federal regulatory authority (RA) has non-delegable responsibility to evaluate a request for bond release. The commenters stated that a single affidavit, i.e. notarized statement, is not a substitute for the RA's determination, and written finding, before bond release, as to completeness and compliance of the reclamation effort. While OSM recognizes that the notarized statement

is not a substitute for the regulatory authority's determination, OSM's position is that a written affirmation of the completion for bond release will encourage operators to look at their postmining land use plan more clearly to ensure that they meet the requirements for bond release. OSM reaffirms the continued responsibility of the RA to determine the completeness and compliance of the reclamation effort prior to bond release. Upon request for bond release, the notarized statement is an additional piece of information used by the RA to evaluate the extent of reclamation according to the approved plan. Most importantly, the certification would serve as a written record indicating that the permittee had examined the requirements of his permit and investigated the nature and extent of reclamation. It would specify that all applicable reclamation responsibilities had been completed.

A number of commenters questioned the need for further documentation "of the reclamation evolution of a site" because the Act and the regulations already impose extensive requirements documenting the reclamation history. OSM disagrees with this comment. OSM is aware that in certain instances operators may not take the time to review their permit and proceed with reclamation that was not approved causing delays in bond release. The proposed rule would help assure that operators would follow their approved postmining land use plans before beginning reclamation to avoid unnecessary reclamation costs or delays in bond release.

A number of commenters expressed concern that further documentation would impose an excessive administrative burden upon the permittee and regulatory authority without any commensurate benefit. OSM disagrees with this comment. The request for certification has been estimated to require an average of 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed and completing and reviewing the collection of information.

A number of commenters argued that a problem does not exist with regard to the need for a notarized statement. OSM believes that a request for a notarized statement will discourage those situations where a request for bond release is premature. Premature requests for bond releases can be categorized into two groups: (1) Operators that have not adequately completed the approved reclamation, or (2) operators that have proceeded with reclamation that was not approved. The unapproved reclamation would then lead the operator to request a revision to the reclamation plan. Revisions to reclamation plans are not automatically approved and must be processed by the regulatory authority in accordance with program standards. OSM believes that a notarized statement which certifies that all applicable reclamation activities have been accomplished may also help avoid situations where an operator requests bond release when an outstanding violation exists.

A frivolous request for bond release is often the result of failure to survey the reclaimed site to ensure that all structures and equipment have been removed, that all reclamation has been successfully accomplished, or that the period of liability is complete before requesting final bond release.

A number of commenters asserted that the proposal to require a notarized statement is no longer valid in light of the recent court decision regarding termination of jurisdiction. On August 30, 1990, the United States District Court for the District of Columbia set aside the regulation that provided for the termination of regulatory jurisdiction over a fully reclaimed surface coal mining operation after bond release unless the decision to release the bond was obtained by collusion, fraud or misrepresentation of a material fact. The Court set aside that regulation on the grounds that liability under the Act is perpetual, regardless of the completion of reclamation and release of the operator's performance bond. *NWF* v. *Lujan*, Nos. 88–2416 etc. (D.D.C. 1990).

OSM disagrees with these commenters because this rule has a basis independent of supporting termination of jurisdiction. As stated above, it encourages operators to assure that reclamation is complete prior to submittal of a bond release application. Moreover, if the Department prevails on its pending appeal of the termination of jurisdiction rule, the certification would provide a stronger basis for establishing misrepresentation at the time of bond release when reclamation was not complete at that time.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The rules apply through cross-referencing in those States with Federal Programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal Programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 938, 941, 942 and 947 respectively. The rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR part 750.

Federal Paperwork Reduction Act

The collection of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0043.

The final rule revises § 800.10 of the regulations in order to update the data concerning the Paperwork Reduction Act and the collections of information contained in 30 CFR part 800. The revision will add to § 800.10, the average time it takes to comply with the collections of information required by part 800 and the addresses to whom comments on the requirements may be sent. Section 800.10 specifies that the average reporting burden is 28 hours per response. This is the total burden for all of the requirements contained in part 800 and includes the 15 minutes per response which it is estimated that the new requirement contained in this rule will add.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA), and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessment and finding of no significant impact are on file in the OSM Administrative Record, room 5131, 1100 L St., NW., Washington, DC.

Author

The principal author of this rule is Nancy R. Broderick, Division of Technical Services, Office of Surface

Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208–2533 (commercial and FTS).

List of Subjects in 30 CFR Part 800

Insurance, Reporting and record keeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, 30 CFR part 800 is amended as set forth below:

Dated: August 9, 1991.

Dave O'Neal,

Assistant Secretary for Land and Minerals Management.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

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

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 800.10 is revised to read as follows:

§ 800.10 Information collection.

The collection of information contained in §§ 800.11, 800.21(c), 800.23(b)(2), 800.23(b)(3), 800.40(a), and 800.60(a) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0043. The information will be used to determine if reclamation bonds are sufficient to comply with the Act. Response is required to obtain a benefit in accordance with the requirements of 30 U.S.C. 1201 *et seq.* Public reporting burden for this collection of information is estimated to average 28 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., rm 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0043), Washington, DC 20503.

3. Section 800.40 is amended by adding paragraph (a)(3) to read as follows:

§ 800.40 Requirement to release performance bonds.

(a) *Bond release application.*

* * * * *

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

* * * * *

[FR Doc. 91–28365 Filed 11–25–91; 8:45 am]

BILLING CODE 4310-05-M

federal register

Tuesday
November 26, 1991

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Notice of Revised Contract Rent Annual Adjustment Factors; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-91-3338; FR-3171-N-01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.
SUMMARY: The United States Housing Act of 1937 (1937 Act) requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This Notice announces revised Annual Adjustment Factors, which are based on a formula using rent and utility data from the Consumer Price Index and using the Bureau of the Census American Housing Surveys. The revised Factors are to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs.
EFFECTIVE DATE: November 26, 1991.
FOR FURTHER INFORMATION CONTACT: Cecelia Livingston, Rental Assistance Division, Office of Public and Indian Housing (202) 708–3887 (TDD: (202) 708–0850); James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 708–3944 (TDD: (202) 708–4594); for technical information regarding the development of the schedules for specific areas or the method used for calculating the Adjustment Factors, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0577 (TDD: (202) 708–0770). Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) requires the Department to provide for adjustments in the maximum monthly rents for units covered by the Section 8 Housing Assistance Payments (HAP) Contracts. Adjustments must reflect changes in the fair market rents (FMRs) prevailing in particular market areas or be based on a reasonable formula.

This Notice establishes revised Annual Adjustment Factors (AAFs) based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys (AHS). The revised AAFs are to be used to adjust Contract Rents under the Section 8 Housing Assistance Payments programs. HUD regulations provide that the AAFs will be published annually in the **Federal Register** (24 CFR 888.202). The annual anniversary date for publication of the AAFs is November 8. These revised AAFs apply (subject to the limitations on applicability discussed below) to adjust Contract Rents on or after November 8, 1991.

Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this Notice are used to adjust Contract Rents for Section 8 units. The following provides a general description of how AAFs apply under the several Section 8 Housing Assistance Payments programs. The application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations.

In certain cases, AAFs are not used to adjust Contract Rents. AAFs are not used for the Section 8 Voucher program. In addition, AAFs are not used for Section 8 Certificate program units subject to 24 CFR 882.110(d), which applies to units in certain otherwise subsidized projects that are rented to Section 8 Certificate program families. (The housing assistance payment for such a unit is equal to the difference between the subsidized rent and the rent payable by the eligible family. Adjustments to the subsidized rents are made in accordance with rules and procedures governing the particular subsidized housing program involved.) In addition, AAFs are not used for units placed under HAP contract in recent years under the Section 202/Section 8 program. Instead, those rents are based on a HUD-approved budget for the project.

Contract Rents for many projects receiving Section 8 subsidies under the Loan Management provisions of 24 CFR part 886, subpart A, and for projects receiving Section 8 subsidies under the Property Disposition provisions of 24 CFR part 886, subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19(e).

The AAFs developed by the formula apply to rental units of all bedroom sizes in each rent interval. Under the Section 8 Moderate Rehabilitation program, the public housing agency (PHA) should use the base rent, not the Contract Rent, to select the correct AAF to apply to the base rent.

Each AAF applies to a specified geographical area, as indicated in the Table at the end of this document. Program participants should refer to the Table that provides the list of states included in each of the four Census Regions and of the metropolitan areas with separate local CPI surveys (defined by counties or New England towns) to make certain that they are using the correct factors. Units located in metropolitan areas with separate local CPI surveys must use the corresponding AAFs for that metropolitan area. Units that are located outside those metropolitan areas with separate local CPI surveys must use the AAFs for the respective Census Region within which the state is located.

Owners of Section 8 units (other than units assisted under the Section 8 Certificate, Moderate Rehabilitation (both regular and SRO), Project-based Assistance Certificates, and FmHA programs) who have HAP Contracts with anniversary dates falling on November 8, 1991 through November 26, 1991 may request that the AAFs be applied retroactively to the anniversary date of their HAP Contracts. Retroactivity is permitted to avoid any detriment to owners because of HUD's delay in the annual publication, as required by 24 CFR 888.202, of the factors. For units assisted under the Section 8 Certificate, Moderate Rehabilitation (both regular and SRO), Project-based Assistance Certificates, and the FmHA programs, the factors are not applied retroactively; the annual adjustments, as of any anniversary date, are determined using the AAFs most recently published in the **Federal Register** (see 24 CFR 882.108(a)(1)(i) and 884.109(b)(2)).

Calculation of Annual Adjustment Factors

AAFs are provided for the four Census Regions, for 73 metropolitan areas and for the State of Hawaii. The formula for calculating the AAFs for each area was developed as follows: (1) The changes in the shelter rent and utilities components were based on the most recent CPI annual average change data; (2) the shelter rent factor was calculated by eliminating the effect of heating costs that are included in the rent of some of the surveyed units; (3) the gross rent factors were calculated by weighing the rent and utility components of rent with the updated

1980 Census Regional and state components; and (4) the AAFs were then adjusted to reflect rent change variations by rent range determined from 1989 national AHS data.

The AAFs for the West Census Region are to be used for nonmetropolitan areas in Alaska, and the Anchorage CPI is to be used for that metropolitan area. The CPI survey for the Honolulu metropolitan area is to be used for all areas in Hawaii.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

This Notice contains a separate set of AAFs for adjusting Contract Rents for manufactured home spaces. There is one factor for each area, which represents the change in the median rent for the area. These factors were derived by following steps one and two in the formula described above.

Other Matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program as set forth in the following tables:

Date: November 15, 1991.

Jack Kemp,

Secretary.

BILLING CODE 4210-32-M

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 103091

NORTH EAST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.070	1.067
$ 300 TO 359	1.066	1.058
$ 360 TO 419	1.063	1.054
$ 420 TO 479	1.059	1.049
$ 480 TO 539	1.056	1.041
$ 540 TO 599	1.052	1.032
$ 600 TO 709	1.045	1.021
$ 710 TO 829	1.038	1.013
$ 830 TO 949	1.031	1.013
$ 950 PLUS	1.024	1.013

MIDWEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.047	1.051
$ 220 TO 269	1.045	1.049
$ 270 TO 309	1.042	1.045
$ 310 TO 359	1.040	1.033
$ 360 TO 399	1.038	1.033
$ 400 TO 449	1.035	1.028
$ 450 TO 529	1.030	1.022
$ 530 TO 619	1.026	1.016
$ 620 TO 709	1.021	1.016
$ 710 PLUS	1.016	1.016

SOUTH CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.050	1.047
$ 210 TO 249	1.047	1.047
$ 250 TO 299	1.045	1.040
$ 300 TO 339	1.042	1.031
$ 340 TO 379	1.040	1.031
$ 380 TO 419	1.037	1.025
$ 420 TO 509	1.032	1.017
$ 510 TO 589	1.027	1.011
$ 590 TO 679	1.022	1.011
$ 680 PLUS	1.017	1.011

WEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.063	1.067
$ 300 TO 359	1.060	1.064
$ 360 TO 419	1.056	1.059
$ 420 TO 479	1.053	1.051
$ 480 TO 539	1.050	1.043
$ 540 TO 599	1.047	1.042
$ 600 TO 729	1.041	1.036
$ 730 TO 849	1.034	1.028
$ 850 TO 969	1.028	1.020
$ 970 PLUS	1.021	1.019

STATE HAWAII

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.130	1.129
$ 340 TO 399	1.123	1.122
$ 400 TO 469	1.117	1.115
$ 470 TO 539	1.110	1.107
$ 540 TO 599	1.104	1.100
$ 600 TO 669	1.097	1.085
$ 670 TO 799	1.084	1.069
$ 800 TO 939	1.071	1.055
$ 940 TO 1069	1.057	1.040
$1070 PLUS	1.044	1.039

PMSA AKRON, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.046	1.054
$ 210 TO 259	1.043	1.043
$ 260 TO 299	1.041	1.036
$ 300 TO 339	1.039	1.031
$ 340 TO 379	1.036	1.025
$ 380 TO 429	1.034	1.025
$ 430 TO 509	1.029	1.011
$ 510 TO 599	1.025	1.011
$ 600 TO 679	1.020	1.011
$ 680 PLUS	1.016	1.011

PMSA ANAHEIM-SANTA ANA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 420	1.063	1.063
$ 420 TO 499	1.060	1.059
$ 500 TO 579	1.056	1.056
$ 580 TO 669	1.053	1.053
$ 670 TO 749	1.050	1.041
$ 750 TO 829	1.047	1.039
$ 830 TO 999	1.041	1.033
$1000 TO 1169	1.034	1.025
$1170 TO 1329	1.028	1.018
$1330 PLUS	1.021	1.017

MSA ANCHORAGE, AK

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.090	1.109
$ 260 TO 319	1.085	1.103
$ 320 TO 369	1.081	1.090
$ 370 TO 419	1.076	1.078
$ 420 TO 479	1.072	1.064
$ 480 TO 529	1.067	1.063
$ 530 TO 629	1.058	1.052
$ 630 TO 739	1.049	1.038
$ 740 TO 839	1.040	1.038
$ 840 PLUS	1.031	1.038

PMSA ANN ARBOR, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.050	1.060
$ 290 TO 339	1.047	1.054
$ 340 TO 399	1.045	1.049
$ 400 TO 459	1.042	1.042
$ 460 TO 519	1.040	1.035
$ 520 TO 569	1.037	1.035
$ 570 TO 689	1.032	1.027
$ 690 TO 799	1.027	1.020
$ 800 TO 919	1.022	1.020
$ 920 PLUS	1.017	1.020

MSA ATLANTA, GA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.031	1.021
$ 270 TO 329	1.030	1.017
$ 330 TO 379	1.028	1.017
$ 380 TO 439	1.027	1.010
$ 440 TO 489	1.025	1.010
$ 490 TO 539	1.023	1.006
$ 540 TO 649	1.020	1.000
$ 650 TO 759	1.017	1.000
$ 760 TO 869	1.014	1.000
$ 870 PLUS	1.011	1.000

PMSA AURORA-ELGIN, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.061	1.076
$ 310 TO 379	1.058	1.072
$ 380 TO 439	1.055	1.061
$ 440 TO 499	1.052	1.053
$ 500 TO 559	1.049	1.045
$ 560 TO 629	1.046	1.045
$ 630 TO 749	1.040	1.036
$ 750 TO 879	1.033	1.027
$ 880 TO 999	1.027	1.027
$1000 PLUS	1.021	1.027

MSA BALTIMORE, MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.063	1.057
$ 260 TO 319	1.060	1.055
$ 320 TO 369	1.056	1.046
$ 370 TO 419	1.053	1.041
$ 420 TO 479	1.050	1.033
$ 480 TO 529	1.047	1.033
$ 530 TO 629	1.041	1.026
$ 630 TO 739	1.034	1.010
$ 740 TO 839	1.028	1.009
$ 840 PLUS	1.021	1.009

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 103091

PMSA BEAVER COUNTY, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.057	1.046
$ 190 TO 219	1.054	1.039
$ 220 TO 259	1.051	1.029
$ 260 TO 299	1.048	1.021
$ 300 TO 339	1.046	1.012
$ 340 TO 369	1.043	1.011
$ 370 TO 449	1.037	1.005
$ 450 TO 519	1.031	1.000
$ 520 TO 599	1.025	1.000
$ 600 PLUS	1.019	1.000

PMSA BOULDER-LONGMONT, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.003	1.000
$ 250 TO 299	1.003	1.000
$ 300 TO 349	1.003	1.000
$ 350 TO 399	1.002	1.000
$ 400 TO 449	1.002	1.000
$ 450 TO 499	1.002	1.000
$ 500 TO 599	1.002	1.000
$ 600 TO 689	1.002	1.000
$ 690 TO 789	1.001	1.000
$ 790 PLUS	1.001	1.000

PMSA BROCKTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.056	1.046
$ 340 TO 409	1.053	1.043
$ 410 TO 479	1.050	1.034
$ 480 TO 549	1.047	1.029
$ 550 TO 619	1.044	1.024
$ 620 TO 689	1.042	1.023
$ 690 TO 829	1.036	1.016
$ 830 TO 969	1.030	1.002
$ 970 TO 1099	1.025	1.002
$1100 PLUS	1.019	1.002

PMSA CINCINNATI, OH-KY-IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.030	1.031
$ 220 TO 269	1.028	1.029
$ 270 TO 309	1.027	1.024
$ 310 TO 349	1.025	1.018
$ 350 TO 399	1.024	1.018
$ 400 TO 439	1.022	1.014
$ 440 TO 529	1.019	1.010
$ 530 TO 619	1.016	1.007
$ 620 TO 709	1.013	1.006
$ 710 PLUS	1.010	1.006

PMSA BERGEN-PASSAIC, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 410	1.080	1.084
$ 410 TO 489	1.076	1.078
$ 490 TO 569	1.072	1.072
$ 570 TO 659	1.068	1.062
$ 660 TO 739	1.064	1.051
$ 740 TO 819	1.060	1.051
$ 820 TO 989	1.052	1.042
$ 990 TO 1149	1.043	1.033
$1150 TO 1309	1.035	1.023
$1310 PLUS	1.027	1.023

PMSA BRAZORIA, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.089	1.103
$ 220 TO 269	1.084	1.098
$ 270 TO 309	1.080	1.083
$ 310 TO 359	1.075	1.072
$ 360 TO 399	1.071	1.072
$ 400 TO 449	1.066	1.059
$ 450 TO 539	1.057	1.046
$ 540 TO 629	1.048	1.034
$ 630 TO 709	1.039	1.034
$ 710 PLUS	1.030	1.034

PMSA BUFFALO, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.092	1.105
$ 210 TO 249	1.087	1.091
$ 250 TO 289	1.082	1.085
$ 290 TO 329	1.078	1.081
$ 330 TO 369	1.073	1.069
$ 370 TO 409	1.068	1.054
$ 410 TO 489	1.059	1.044
$ 490 TO 579	1.050	1.032
$ 580 TO 659	1.040	1.031
$ 660 PLUS	1.031	1.031

PMSA CLEVELAND, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.046	1.046
$ 220 TO 269	1.043	1.045
$ 270 TO 309	1.041	1.038
$ 310 TO 359	1.039	1.033
$ 360 TO 399	1.036	1.024
$ 400 TO 449	1.034	1.024
$ 450 TO 539	1.029	1.018
$ 540 TO 629	1.025	1.012
$ 630 TO 719	1.020	1.012
$ 720 PLUS	1.016	1.012

PMSA BOSTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 420	1.056	1.045
$ 420 TO 499	1.053	1.041
$ 500 TO 589	1.050	1.035
$ 590 TO 669	1.047	1.030
$ 670 TO 749	1.044	1.023
$ 750 TO 839	1.042	1.023
$ 840 TO 1009	1.036	1.017
$1010 TO 1169	1.030	1.002
$1170 TO 1339	1.025	1 002
$1340 PLUS	1.019	1.002

PMSA BRIDGEPORT-MILFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.080	1.084
$ 320 TO 389	1.076	1.076
$ 390 TO 449	1.072	1.069
$ 450 TO 519	1.068	1.064
$ 520 TO 579	1.064	1.053
$ 580 TO 649	1.060	1.042
$ 650 TO 779	1.052	1.032
$ 780 TO 909	1.043	1.021
$ 910 TO 1029	1.035	1.021
$1030 PLUS	1.027	1.021

PMSA CHICAGO, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.064	1.079
$ 310 TO 369	1.061	1.071
$ 370 TO 429	1.058	1.065
$ 430 TO 489	1.055	1.061
$ 490 TO 549	1.051	1.054
$ 550 TO 609	1.048	1.043
$ 610 TO 739	1.041	1.036
$ 740 TO 859	1.035	1.026
$ 860 TO 979	1.028	1.026
$ 980 PLUS	1.022	1 026

PMSA DALLAS, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.044	1.047
$ 260 TO 309	1.042	1.046
$ 310 TO 359	1.040	1.042
$ 360 TO 409	1.038	1.034
$ 410 TO 459	1.035	1.032
$ 460 TO 509	1.033	1.027
$ 510 TO 609	1.029	1.021
$ 610 TO 709	1.024	1.015
$ 710 TO 819	1.020	1.015
$ 820 PLUS	1.015	1 015

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 103091

PMSA DANBURY, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 350	1.080	1.083
$ 350 TO 419	1.076	1.073
$ 420 TO 489	1.072	1.068
$ 490 TO 559	1.068	1.063
$ 560 TO 629	1.064	1.052
$ 630 TO 699	1.060	1.042
$ 700 TO 839	1.052	1.032
$ 840 TO 979	1.043	1.021
$ 980 TO 1119	1.035	1.021
$1120 PLUS	1.027	1.021

PMSA DENVER, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.003	1.000
$ 230 TO 279	1.003	1.000
$ 280 TO 319	1.003	1.000
$ 320 TO 369	1.002	1.000
$ 370 TO 409	1.002	1.000
$ 410 TO 459	1.002	1.000
$ 460 TO 549	1.002	1.000
$ 550 TO 639	1.002	1.000
$ 640 TO 729	1.001	1.000
$ 730 PLUS	1.001	1.000

PMSA DETROIT, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.050	1.060
$ 240 TO 289	1.047	1.057
$ 290 TO 339	1.045	1.048
$ 340 TO 389	1.042	1.041
$ 390 TO 429	1.040	1.041
$ 430 TO 479	1.037	1.035
$ 480 TO 579	1.032	1.028
$ 580 TO 669	1.027	1.021
$ 670 TO 769	1.022	1.021
$ 770 PLUS	1.017	1.021

PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.027	1.031
$ 290 TO 349	1.026	1.028
$ 350 TO 409	1.024	1.026
$ 410 TO 469	1.023	1.023
$ 470 TO 519	1.022	1.020
$ 520 TO 579	1.020	1.020
$ 580 TO 699	1.017	1.017
$ 700 TO 819	1.015	1.011
$ 820 TO 929	1.012	1.010
$ 930 PLUS	1.009	1.010

PMSA FORT WORTH-ARLINGTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.044	1.051
$ 220 TO 269	1.042	1.045
$ 270 TO 309	1.040	1.041
$ 310 TO 359	1.038	1.039
$ 360 TO 399	1.035	1.034
$ 400 TO 449	1.033	1.026
$ 450 TO 539	1.029	1.020
$ 540 TO 629	1.024	1.015
$ 630 TO 719	1.020	1.015
$ 720 PLUS	1.015	1.015

PMSA GALVESTON-TEXAS CITY, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 200	1.089	1.100
$ 200 TO 239	1.084	1.095
$ 240 TO 279	1.080	1.081
$ 280 TO 319	1.075	1.070
$ 320 TO 359	1.071	1.070
$ 360 TO 399	1.066	1.061
$ 400 TO 479	1.057	1.045
$ 480 TO 559	1.048	1.033
$ 560 TO 639	1.039	1.033
$ 640 PLUS	1.030	1.033

PMSA GARY-HAMMOND, IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.061	1.076
$ 250 TO 299	1.058	1.073
$ 300 TO 349	1.055	1.065
$ 350 TO 399	1.052	1.056
$ 400 TO 449	1.049	1.045
$ 450 TO 499	1.046	1.044
$ 500 TO 599	1.040	1.036
$ 600 TO 699	1.033	1.028
$ 700 TO 799	1.027	1.028
$ 800 PLUS	1.021	1.027

PMSA HAMILTON-MIDDLETOWN, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.030	1.031
$ 220 TO 269	1.028	1.029
$ 270 TO 309	1.027	1.024
$ 310 TO 359	1.025	1.018
$ 360 TO 399	1.024	1.018
$ 400 TO 449	1.022	1.014
$ 450 TO 539	1.019	1.012
$ 540 TO 629	1.016	1.007
$ 630 TO 719	1.013	1.006
$ 720 PLUS	1.010	1.005

PMSA HOUSTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.089	1.105
$ 210 TO 249	1.084	1.100
$ 250 TO 289	1.080	1.081
$ 290 TO 329	1.075	1.071
$ 330 TO 369	1.071	1.071
$ 370 TO 409	1.066	1.059
$ 410 TO 499	1.057	1.046
$ 500 TO 579	1.048	1.033
$ 580 TO 659	1.039	1.033
$ 660 PLUS	1.030	1.033

PMSA JERSEY CITY, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.080	1.085
$ 290 TO 349	1.076	1.078
$ 350 TO 399	1.072	1.067
$ 400 TO 459	1.068	1.063
$ 460 TO 519	1.064	1.053
$ 520 TO 579	1.060	1.051
$ 580 TO 689	1.052	1.043
$ 690 TO 809	1.043	1.023
$ 810 TO 919	1.035	1.023
$ 920 PLUS	1.027	1.022

PMSA JOLIET, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.064	1.079
$ 320 TO 379	1.061	1.069
$ 380 TO 439	1.058	1.066
$ 440 TO 509	1.055	1.061
$ 510 TO 569	1.051	1.054
$ 570 TO 629	1.048	1.043
$ 630 TO 759	1.041	1.035
$ 760 TO 879	1.035	1.027
$ 880 TO 1009	1.028	1.026
$1010 PLUS	1.022	1.026

MSA KANSAS CITY, MO-KS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.026	1.022
$ 210 TO 259	1.024	1.021
$ 260 TO 299	1.023	1.014
$ 300 TO 339	1.022	1.012
$ 340 TO 389	1.021	1.008
$ 390 TO 429	1.019	1.005
$ 430 TO 509	1.017	1.004
$ 510 TO 599	1.014	1.002
$ 600 TO 689	1.011	1.002
$ 690 PLUS	1.009	1.001

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 103091

PMSA KENOSHA, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.063	1.079
$ 240 TO 289	1.060	1.068
$ 290 TO 339	1.056	1.067
$ 340 TO 389	1.053	1.060
$ 390 TO 439	1.050	1.053
$ 440 TO 489	1.047	1.045
$ 490 TO 579	1.041	1.034
$ 580 TO 679	1.034	1.027
$ 680 TO 779	1.028	1.026
$ 780 PLUS	1.021	1.026

PMSA LORAIN-ELYRIA, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.046	1.047
$ 210 TO 249	1.043	1.043
$ 250 TO 289	1.041	1.041
$ 290 TO 339	1.039	1.032
$ 340 TO 379	1.036	1.025
$ 380 TO 419	1.034	1.025
$ 420 TO 499	1.029	1.020
$ 500 TO 589	1.025	1.013
$ 590 TO 669	1.020	1.013
$ 670 PLUS	1.016	1.013

PMSA MIAMI-HIALEAH, FL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.027	1.031
$ 280 TO 329	1.026	1.030
$ 330 TO 389	1.024	1.028
$ 390 TO 449	1.023	1.024
$ 450 TO 499	1.022	1.021
$ 500 TO 559	1.020	1.021
$ 560 TO 669	1.017	1.018
$ 670 TO 779	1.015	1.011
$ 780 TO 889	1.012	1.011
$ 890 PLUS	1.009	1.011

MSA MINNEAPOLIS-ST. PAUL, MN-WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.037	1.033
$ 270 TO 319	1.035	1.031
$ 320 TO 369	1.033	1.026
$ 370 TO 419	1.032	1.025
$ 420 TO 479	1.030	1.020
$ 480 TO 529	1.028	1.016
$ 530 TO 639	1.024	1.012
$ 640 TO 739	1.020	1.007
$ 740 TO 849	1.016	1.006
$ 850 PLUS	1.013	1.006

PMSA LAKE COUNTY, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.064	1.077
$ 320 TO 389	1.061	1.070
$ 390 TO 449	1.058	1.067
$ 450 TO 509	1.055	1.063
$ 510 TO 579	1.051	1.053
$ 580 TO 639	1.048	1.043
$ 640 TO 769	1.041	1.035
$ 770 TO 899	1.035	1.026
$ 900 TO 1029	1.028	1.026
$1030 PLUS	1.022	1.026

PMSA LOS ANGELES-LONG BEACH, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 360	1.063	1.062
$ 360 TO 429	1.060	1.058
$ 430 TO 499	1.056	1.056
$ 500 TO 579	1.053	1.052
$ 580 TO 649	1.050	1.041
$ 650 TO 719	1.047	1.039
$ 720 TO 869	1.041	1.033
$ 870 TO 1009	1.034	1.024
$1010 TO 1149	1.028	1.018
$1150 PLUS	1.021	1.018

PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 380	1.080	1.084
$ 380 TO 449	1.076	1.077
$ 450 TO 529	1.072	1.067
$ 530 TO 599	1.068	1.062
$ 600 TO 679	1.064	1.052
$ 680 TO 749	1.060	1.052
$ 750 TO 909	1.052	1.042
$ 910 TO 1059	1.043	1.022
$1060 TO 1209	1.035	1.022
$1210 PLUS	1.027	1.022

PMSA MONMOUTH-OCEAN, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.080	1.082
$ 340 TO 409	1.076	1.077
$ 410 TO 469	1.072	1.068
$ 470 TO 539	1.068	1.063
$ 540 TO 609	1.064	1.052
$ 610 TO 679	1.060	1.052
$ 680 TO 809	1.052	1.042
$ 810 TO 949	1.043	1.033
$ 950 TO 1089	1.035	1.023
$1090 PLUS	1.027	1.023

PMSA LAWRENCE-HAVERHILL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 360	1.056	1.046
$ 360 TO 429	1.053	1.041
$ 430 TO 499	1.050	1.034
$ 500 TO 569	1.047	1.030
$ 570 TO 639	1.044	1.023
$ 640 TO 709	1.042	1.023
$ 710 TO 849	1.036	1.017
$ 850 TO 989	1.030	1.002
$ 990 TO 1139	1.025	1.002
$1140 PLUS	1.019	1.002

PMSA LOWELL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.056	1.044
$ 330 TO 399	1.053	1.041
$ 400 TO 469	1.050	1.034
$ 470 TO 529	1.047	1.032
$ 530 TO 599	1.044	1.023
$ 600 TO 659	1.042	1.023
$ 660 TO 799	1.036	1.016
$ 800 TO 929	1.030	1.002
$ 930 TO 1059	1.025	1.002
$1060 PLUS	1.019	1.002

PMSA MILWAUKEE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.037	1.063
$ 230 TO 279	1.035	1.059
$ 280 TO 329	1.033	1.059
$ 330 TO 369	1.032	1.054
$ 370 TO 419	1.030	1.051
$ 420 TO 469	1.028	1.047
$ 470 TO 559	1.024	1.041
$ 560 TO 649	1.020	1.036
$ 650 TO 739	1.016	1.036
$ 740 PLUS	1.013	1.036

PMSA NASHUA, NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 350	1.056	1.044
$ 350 TO 419	1.053	1.042
$ 420 TO 489	1.050	1.033
$ 490 TO 559	1.047	1.030
$ 560 TO 629	1.044	1.024
$ 630 TO 699	1.042	1.015
$ 700 TO 839	1.036	1.015
$ 840 TO 979	1.030	1.001
$ 980 TO 1119	1.025	1.001
$1120 PLUS	1.019	1.001

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 103091

PMSA NASSAU-SUFFOLK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 400	1.080	1.083
$ 400 TO 479	1.076	1.077
$ 480 TO 559	1.072	1.071
$ 560 TO 639	1.068	1.062
$ 640 TO 719	1.064	1.053
$ 720 TO 799	1.060	1.053
$ 800 TO 959	1.052	1.042
$ 960 TO 1119	1.043	1.033
$1120 TO 1279	1.035	1.022
$1280 PLUS	1.027	1.022

PMSA NEW YORK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.080	1.081
$ 300 TO 359	1.076	1.076
$ 360 TO 419	1.072	1.074
$ 420 TO 479	1.068	1.062
$ 480 TO 539	1.064	1.051
$ 540 TO 599	1.060	1.051
$ 600 TO 719	1.052	1.042
$ 720 TO 839	1.043	1.032
$ 840 TO 959	1.035	1.022
$ 960 PLUS	1.027	1.022

PMSA NEWARK, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 340	1.080	1.082
$ 340 TO 409	1.076	1.077
$ 410 TO 469	1.072	1.068
$ 470 TO 539	1.068	1.063
$ 540 TO 609	1.064	1.052
$ 610 TO 679	1.060	1.052
$ 680 TO 809	1.052	1.042
$ 810 TO 949	1.043	1.023
$ 950 TO 1079	1.035	1.023
$1080 PLUS	1.027	1.023

PMSA NIAGARA FALLS, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.092	1.105
$ 210 TO 249	1.087	1.091
$ 250 TO 289	1.082	1.085
$ 290 TO 329	1.078	1.081
$ 330 TO 379	1.073	1.068
$ 380 TO 419	1.068	1.055
$ 420 TO 499	1.059	1.043
$ 500 TO 579	1.050	1.031
$ 580 TO 669	1.040	1.031
$ 670 PLUS	1.031	1.031

PMSA NORWALK, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 370	1.080	1.085
$ 370 TO 449	1.076	1.073
$ 450 TO 519	1.072	1.068
$ 520 TO 599	1.068	1.064
$ 600 TO 669	1.064	1.054
$ 670 TO 739	1.060	1.043
$ 740 TO 889	1.052	1.032
$ 890 TO 1039	1.043	1.021
$1040 TO 1189	1.035	1.021
$1190 PLUS	1.027	1.021

PMSA OAKLAND, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 370	1.067	1.069
$ 370 TO 439	1.064	1.064
$ 440 TO 519	1.060	1.060
$ 520 TO 589	1.057	1.052
$ 590 TO 659	1.054	1.043
$ 660 TO 739	1.050	1.043
$ 740 TO 879	1.043	1.036
$ 880 TO 1029	1.036	1.027
$1030 TO 1179	1.030	1.020
$1180 PLUS	1.023	1.019

PMSA ORANGE COUNTY, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.080	1.082
$ 310 TO 369	1.076	1.076
$ 370 TO 429	1.072	1.070
$ 430 TO 499	1.068	1.062
$ 500 TO 559	1.064	1.053
$ 560 TO 619	1.060	1.051
$ 620 TO 739	1.052	1.043
$ 740 TO 869	1.043	1.032
$ 870 TO 989	1.035	1.023
$ 990 PLUS	1.027	1.023

PMSA OXNARD-VENTURA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 360	1.063	1.062
$ 360 TO 429	1.060	1.058
$ 430 TO 499	1.056	1.056
$ 500 TO 569	1.053	1.050
$ 570 TO 639	1.050	1.041
$ 640 TO 709	1.047	1.040
$ 710 TO 849	1.041	1.032
$ 850 TO 999	1.034	1.025
$1000 TO 1139	1.028	1.018
$1140 PLUS	1.021	1.017

PMSA PHILADELPHIA, PA-NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.069	1.064
$ 280 TO 339	1.065	1.058
$ 340 TO 389	1.062	1.052
$ 390 TO 449	1.058	1.038
$ 450 TO 509	1.055	1.038
$ 510 TO 559	1.051	1.028
$ 560 TO 679	1.044	1.021
$ 680 TO 789	1.037	1.010
$ 790 TO 899	1.030	1.010
$ 900 PLUS	1.023	1.010

PMSA PITTSBURGH, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.057	1.042
$ 210 TO 249	1.054	1.039
$ 250 TO 299	1.051	1.033
$ 300 TO 339	1.048	1.022
$ 340 TO 379	1.046	1.014
$ 380 TO 419	1.043	1.014
$ 420 TO 509	1.037	1.006
$ 510 TO 589	1.031	1.000
$ 590 TO 679	1.025	1.000
$ 680 PLUS	1.019	1.000

PMSA PORTLAND, OR

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.070	1.077
$ 240 TO 279	1.066	1.073
$ 280 TO 329	1.063	1.069
$ 330 TO 379	1.059	1.065
$ 380 TO 429	1.056	1.052
$ 430 TO 469	1.052	1.051
$ 470 TO 569	1.045	1.042
$ 570 TO 659	1.038	1.034
$ 660 TO 759	1.031	1.027
$ 760 PLUS	1.024	1.026

PMSA RACINE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.037	1.060
$ 220 TO 259	1.035	1.060
$ 260 TO 309	1.033	1.060
$ 310 TO 349	1.032	1.052
$ 350 TO 399	1.030	1.051
$ 400 TO 439	1.028	1.048
$ 440 TO 529	1.024	1.041
$ 530 TO 619	1.020	1.037
$ 620 TO 699	1.016	1.036
$ 700 PLUS	1.013	1.036

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 103091

PMSA RIVERSIDE-SAN'BERNARDINO, CA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 290	1.063	1.062
$ 290 TO 349	1.060	1.059
$ 350 TO 409	1.056	1.058
$ 410 TO 459	1.053	1.051
$ 460 TO 519	1.050	1.041
$ 520 TO 579	1.047	1.040
$ 580 TO 699	1.041	1.033
$ 700 TO 809	1.034	1.025
$ 810 TO 929	1.028	1.018
$ 930 PLUS	1.021	1.018

MSA SAN DIEGO, CA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 330	1.057	1.061
$ 330 TO 399	1.054	1.058
$ 400 TO 459	1.051	1.053
$ 460 TO 529	1.048	1.051
$ 530 TO 589	1.046	1.046
$ 590 TO 659	1.043	1.040
$ 660 TO 789	1.037	1.034
$ 790 TO 919	1.031	1.027
$ 920 TO 1059	1.025	1.020
$1060 PLUS	1.019	1.020

PMSA SANTA CRUZ, CA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 400	1.067	1.068
$ 400 TO 469	1.064	1.064
$ 470 TO 549	1.060	1.059
$ 550 TO 629	1.057	1.056
$ 630 TO 709	1.054	1.043
$ 710 TO 789	1.050	1.043
$ 790 TO 949	1.043	1.034
$ 950 TO 1109	1.036	1.027
$1110 TO 1259	1.030	1.019
$1260 PLUS	1.023	1.019

PMSA STAMFORD, CT

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 450	1.080	1.084
$ 450 TO 539	1.076	1.075
$ 540 TO 629	1.072	1.068
$ 630 TO 719	1.068	1.064
$ 720 TO 809	1.064	1.052
$ 810 TO 899	1.060	1.042
$ 900 TO 1079	1.052	1.032
$1080 TO 1259	1.043	1.021
$1260 TO 1439	1.035	1.021
$1440 PLUS	1.027	1.021

PMSA ST. LOUIS, MO-IL

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 230	1.034	1.039
$ 230 TO 279	1.033	1.035
$ 280 TO 329	1.031	1.030
$ 330 TO 379	1.029	1.023
$ 380 TO 419	1.027	1.022
$ 420 TO 469	1.026	1.020
$ 470 TO 559	1.022	1.014
$ 560 TO 659	1.019	1.008
$ 660 TO 749	1.015	1.008
$ 750 PLUS	1.012	1.008

PMSA SAN FRANCISCO, CA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 440	1.067	1.066
$ 440 TO 529	1.064	1.064
$ 530 TO 619	1.060	1.059
$ 620 TO 709	1.057	1.056
$ 710 TO 799	1.054	1.042
$ 800 TO 889	1.050	1.042
$ 890 TO 1059	1.043	1.036
$1060 TO 1239	1.036	1.027
$1240 TO 1419	1.030	1.020
$1420 PLUS	1.023	1.019

PMSA SANTA ROSA-PETALUMA, CA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 350	1.067	1.067
$ 350 TO 419	1.064	1.062
$ 420 TO 489	1.060	1.059
$ 490 TO 559	1.057	1.055
$ 560 TO 629	1.054	1.044
$ 630 TO 689	1.050	1.042
$ 690 TO 829	1.043	1.034
$ 830 TO 969	1.036	1.027
$ 970 TO 1109	1.030	1.019
$1110 PLUS	1.023	1.019

PMSA TACOMA, WA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 230	1.099	1.110
$ 230 TO 269	1.094	1.104
$ 270 TO 319	1.089	1.098
$ 320 TO 369	1.084	1.087
$ 370 TO 409	1.079	1.074
$ 410 TO 459	1.074	1.074
$ 460 TO 549	1.064	1.063
$ 550 TO 639	1.054	1.050
$ 640 TO 729	1.044	1.038
$ 730 PLUS	1.034	1.038

PMSA SALEM-GLOUCESTER, MA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 370	1.056	1.045
$ 370 TO 439	1.053	1.042
$ 440 TO 519	1.050	1.033
$ 520 TO 589	1.047	1.031
$ 590 TO 659	1.044	1.024
$ 660 TO 739	1.042	1.023
$ 740 TO 889	1.036	1.016
$ 890 TO 1029	1.030	1.002
$1030 TO 1179	1.025	1.002
$1180 PLUS	1.019	1.002

PMSA SAN JOSE, CA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 410	1.067	1.068
$ 410 TO 489	1.064	1.064
$ 490 TO 569	1.060	1.058
$ 570 TO 649	1.057	1.056
$ 650 TO 729	1.054	1.043
$ 730 TO 809	1.050	1.043
$ 810 TO 979	1.043	1.035
$ 980 TO 1139	1.036	1.027
$1140 TO 1299	1.030	1.020
$1300 PLUS	1.023	1.019

PMSA SEATTLE, WA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 290	1.099	1.109
$ 290 TO 339	1.094	1.105
$ 340 TO 399	1.089	1.100
$ 400 TO 459	1.084	1.088
$ 460 TO 509	1.079	1.076
$ 510 TO 569	1.074	1.076
$ 570 TO 689	1.064	1.062
$ 690 TO 799	1.054	1.051
$ 800 TO 909	1.044	1.039
$ 910 PLUS	1.034	1.039

PMSA TRENTON, NJ

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 350	1.067	1.059
$ 350 TO 409	1.064	1.055
$ 410 TO 479	1.060	1.052
$ 480 TO 549	1.057	1.047
$ 550 TO 619	1.054	1.038
$ 620 TO 689	1.050	1.029
$ 690 TO 829	1.043	1.021
$ 830 TO 969	1.036	1.011
$ 970 TO 1109	1.030	1.011
$1110 PLUS	1.023	1.011

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 103091

PMSA VALLEJO-FAIRFIELD-NAPA, CA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 300	1.067	1.067
$ 300 TO 359	1.064	1.064
$ 360 TO 419	1.060	1.059
$ 420 TO 479	1.057	1.056
$ 480 TO 549	1.054	1.043
$ 550 TO 609	1.050	1.043
$ 610 TO 729	1.043	1.036
$ 730 TO 849	1.036	1.027
$ 850 TO 969	1.030	1.019
$ 970 PLUS	1.023	1.018

MSA WASHINGTON, DC-MD-VA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 350	1.061	1.063
$ 350 TO 419	1.058	1.060
$ 420 TO 489	1.055	1.055
$ 490 TO 559	1.052	1.050
$ 560 TO 629	1.049	1.040
$ 630 TO 709	1.046	1.040
$ 710 TO 849	1.040	1.033
$ 850 TO 989	1.033	1.026
$ 990 TO 1129	1.027	1.018
$1130 PLUS	1.021	1.018

PMSA VANCOUVER, WA

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 220	1.070	1.075
$ 220 TO 259	1.066	1.075
$ 260 TO 299	1.063	1.068
$ 300 TO 349	1.059	1.062
$ 350 TO 389	1.056	1.054
$ 390 TO 439	1.052	1.053
$ 440 TO 519	1.045	1.042
$ 520 TO 609	1.038	1.034
$ 610 TO 699	1.031	1.026
$ 700 PLUS	1.024	1.026

COUNTY WESTCHESTER, NY

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 360	1.080	1.083
$ 360 TO 429	1.076	1.076
$ 430 TO 499	1.072	1.073
$ 500 TO 579	1.068	1.063
$ 580 TO 649	1.064	1.052
$ 650 TO 719	1.060	1.052
$ 720 TO 859	1.052	1.042
$ 860 TO 1009	1.043	1.033
$1010 TO 1149	1.035	1.022
$1150 PLUS	1.027	1.022

PMSA VINELAND-MILLVILLE-BRIDGETON, NJ

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 280	1.067	1.063
$ 280 TO 329	1.064	1.056
$ 330 TO 389	1.060	1.050
$ 390 TO 439	1.057	1.046
$ 440 TO 499	1.054	1.038
$ 500 TO 549	1.050	1.029
$ 550 TO 659	1.043	1.021
$ 660 TO 769	1.036	1.013
$ 770 TO 879	1.030	1.012
$ 880 PLUS	1.023	1.012

PMSA WILMINGTON, DE-NJ-MD

	HIGHEST COST UTILITY	
	INCLUDED	EXCLUDED
UNDER $ 290	1.069	1.064
$ 290 TO 339	1.065	1.057
$ 340 TO 399	1.062	1.049
$ 400 TO 459	1.058	1.037
$ 460 TO 519	1.055	1.029
$ 520 TO 569	1.051	1.026
$ 570 TO 689	1.044	1.017
$ 690 TO 799	1.037	1.007
$ 800 TO 919	1.030	1.007
$ 920 PLUS	1.023	1.007

SCHEDULE C - ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - FOR MANUFACTURED HOME SPACE

PREPARED ON 103091

AREA	FACTOR
NORTH EAST CENSUS REGION	1.046
SOUTH CENSUS REGION	1.035
STATE HAWAII	1.093
PMSA ANAHEIM-SANTA ANA, CA	1.045
PMSA ANN ARBOR, MI	1.046
PMSA AURORA-ELGIN, IL	1.058
PMSA BEAVER COUNTY, PA	1.026
PMSA BOSTON, MA	1.027
PMSA BRAZORIA, TX	1.078
PMSA BROCKTON, MA	1.027
PMSA CHICAGO, IL	1.057
PMSA CLEVELAND, OH	1.036
PMSA DANBURY, CT	1.059
PMSA DETROIT, MI	1.046
PMSA FORT WORTH-ARLINGTON, TX	1.036
PMSA GARY-HAMMOND, IN	1.058
PMSA HOUSTON, TX	1.078
PMSA JOLIET, IL	1.057
PMSA KENOSHA, WI	1.057
PMSA LAWRENCE-HAVERHILL, MA-NH	1.027
PMSA LOS ANGELES-LONG BEACH, CA	1.045
PMSA MIAMI-HIALEAH, FL	1.024
PMSA MILWAUKEE, WI	1.055
PMSA MONMOUTH-OCEAN, NJ	1.058
PMSA NASSAU-SUFFOLK, NY	1.058
PMSA NEWARK, NJ	1.058
PMSA NORWALK, CT	1.059
PMSA ORANGE COUNTY, NY	1.058
PMSA PHILADELPHIA, PA-NJ	1.043
PMSA PORTLAND, OR	1.057
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.045
PMSA SALEM-GLOUCESTER, MA	1.027
PMSA SAN FRANCISCO, CA	1.047
PMSA SANTA CRUZ, CA	1.047
PMSA SEATTLE, WA	1.081
PMSA TACOMA, WA	1.081
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.047
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.043
COUNTY WESTCHESTER, NY	1.058

AREA	FACTOR
MIDWEST CENSUS REGION	1.039
WEST CENSUS REGION	1.047
PMSA AKRON, OH	1.036
MSA ANCHORAGE, AK	1.085
MSA ATLANTA, GA	1.013
MSA BALTIMORE, MD	1.037
PMSA BERGEN-PASSAIC, NJ	1.058
PMSA BOULDER-LONGMONT, CO	1.000
PMSA BRIDGEPORT-MILFORD, CT	1.059
PMSA BUFFALO, NY	1.075
PMSA CINCINNATI, OH-KY-IN	1.021
PMSA DALLAS, TX	1.036
PMSA DENVER, CO	1.000
PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC	1.024
PMSA GALVESTON-TEXAS CITY, TX	1.078
PMSA HAMILTON-MIDDLETOWN, OH	1.021
PMSA JERSEY CITY, NJ	1.058
MSA KANSAS CITY, MO-KS	1.015
PMSA LAKE COUNTY, IL	1.057
PMSA LORAIN-ELYRIA, OH	1.036
PMSA LOWELL, MA-NH	1.027
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.058
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.024
PMSA NASHUA, NH	1.027
PMSA NEW YORK, NY	1.058
PMSA NIAGARA FALLS, NY	1.075
PMSA OAKLAND, CA	1.047
PMSA OXNARD-VENTURA, CA	1.045
PMSA PITTSBURGH, PA	1.026
PMSA RACINE, WI	1.055
PMSA ST. LOUIS, MO-IL	1.025
MSA SAN DIEGO, CA	1.044
PMSA SAN JOSE, CA	1.047
PMSA SANTA ROSA-PETALUMA, CA	1.047
PMSA STAMFORD, CT	1.059
PMSA TRENTON, NJ	1.043
PMSA VANCOUVER, WA	1.057
MSA WASHINGTON, DC-MD-VA	1.045
PMSA WILMINGTON, DE-NJ-MD	1.043

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF REGIONS

AREA TITLE	DEFINITION
NORTHEAST CENSUS REGION	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont
MIDWEST CENSUS REGION	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin
SOUTH CENSUS REGION	Alabama, Arkansas, Delaware, Dist. Of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, Puerto Rico, Virgin Islands
WEST CENSUS REGION	Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Guam, Trust Territories

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Akron, Oh	COUNTY(IES) Portage, Summit Oh
Anaheim-Santa Ana, Ca	COUNTY(IES) Orange Ca
Anchorage, Ak	BOROUGH(IES) Anchorage Ak
Ann Arbor, Mi	COUNTY(IES) Washtenaw Mi
Atlanta, Ga	COUNTY(IES) Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding, Walton Ga
Aurora-Elgin, Il	COUNTY(IES) Kane, Kendall Il
Baltimore, Md	COUNTY(IES) Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, Baltimore Ct Md
Beaver County, Pa	COUNTY(IES) Beaver Pa
Bergen-Passaic, Nj	COUNTY(IES) Bergen, Passaic Nj
Boston, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Mansfield, Norton, Raynham COUNTY Essex, Ma (PART): TOWNS OF Lynn, Lynnfield, Nahant, Saugus COUNTY Middlesex, Ma (PART): TOWNS OF Acton, Arlington, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Groton, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Readin, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, weston, Wilmington, Winchester, Woburn COUNTY Norfolk, Ma (PART): TOWNS OF Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham COUNTY Plymouth, Ma (PART): TOWNS OF Carver, Duxbury, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleboroug, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate COUNTY Suffolk, Ma (PART): TOWNS OF Boston, Chelsea, Revere, Winthrop COUNTY Worcester, Ma (PART): TOWNS OF Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, Upton

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Boulder-Longmont, Co	COUNTY(IES) Boulder Co
Brazoria, Tx	COUNTY(IES) Brazoria Tx
Bridgeport-Milford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull COUNTY New Haven, Ct (PART): TOWNS OF Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour
Brockton, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Easton COUNTY Norfolk, Ma (PART): TOWNS OF Avon COUNTY Plymouth, Ma (PART): TOWNS OF Abington, Bridgewater, Brockton, East Bridgew, Halifax, West Bridgew, Whitman
Buffalo, Ny	COUNTY(IES) Erie Ny
Chicago, Il	COUNTY(IES) Cook, Du Page, Mchenry Il
Cincinnati, Oh-Ky-In	COUNTY(IES) Dearborn In; Boone, Campbell, Kenton Ky; Clermont, Hamilton, Warren Oh
Cleveland, Oh	COUNTY(IES) Cuyahoga, Geauga, Lake, Medina Oh
Dallas, Tx	COUNTY(IES) Collin, Dallas, Denton, Ellis, Kaufman, Rockwall Tx
Danbury, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bethel, Brookfield, Danbury, New Fairfiel, Newtown, Redding, Ridgefield, Sherman COUNTY Litchfield, Ct (PART): TOWNS OF Bridgewater, New Milford
Denver, Co	COUNTY(IES) Adams, Arapahoe, Denver, Douglas, Jefferson Co
Detroit, Mi	COUNTY(IES) Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair, Wayne Mi
Fort Lauderdale-Hollywood-Pompano Beach, Fl	COUNTY(IES) Broward Fl
Fort Worth-Arlington, Tx	COUNTY(IES) Johnson, Parker, Tarrant Tx
Galveston-Texas City, Tx	COUNTY(IES) Galveston Tx
Gary-Hammond, In	COUNTY(IES) Lake, Porter In
Hamilton-Middletown, Oh	COUNTY(IES) Butler Oh
Houston, Tx	COUNTY(IES) Fort Bend, Harris, Liberty, Montgomery, Waller Tx
Jersey City, Nj	COUNTY(IES) Hudson Nj
Joliet, Il	COUNTY(IES) Grundy, Will Il
Kansas City, Mo-Ks	COUNTY(IES) Johnson, Leavenworth, Miami, Wyandotte Ks; Cass, Clay, Jackson, Lafayette, Platte, Ray Mo
Kenosha, Wi	COUNTY(IES) Kenosha Wi
Lake County, Il	COUNTY(IES) Lake Il

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Lawrence-Haverhill, Ma-Nh	COUNTY Essex, Ma (PART): TOWNS OF Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andove, Salisbury, West Newbury COUNTY Rockingham, Nh (PART): TOWNS OF Atkinson, Brentwood, Danville, Derry, East Kingsto, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham
Lorain-Elyria, Oh	COUNTY(IES) Lorain Oh
Los Angeles-Long Beach, Ca	COUNTY(IES) Los Angeles Ca
Lowell, Ma-Nh	COUNTY Middlesex, Ma (PART): TOWNS OF Billerica, Chelmsford, Dracut, Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford COUNTY Hillsborough, Nh (PART): TOWNS OF Pelham
Miami-Hialeah, Fl	COUNTY(IES) Dade Fl
Middlesex-Somerset-Hunterdon, Nj	COUNTY(IES) Hunterdon, Middlesex, Somerset Nj
Milwaukee, Wi	COUNTY(IES) Milwaukee, Ozaukee, Washington, Waukesha Wi
Minneapolis-St. Paul, Mn-Wi	COUNTY(IES) Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright Mn; St Croix Wi
Monmouth-Ocean, Nj	COUNTY(IES) Monmouth, Ocean Nj
Nashua, Nh	COUNTY Hillsborough, Nh (PART): TOWNS OF Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton COUNTY Rockingham, Nh (PART): TOWNS OF Londonderry
Nassau-Suffolk, Ny	COUNTY(IES) Nassau, Suffolk Ny
New York, Ny	COUNTY(IES) Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland Ny
Newark, Nj	COUNTY(IES) Essex, Morris, Sussex, Union Nj
Niagara Falls, Ny	COUNTY(IES) Niagara Ny
Norwalk, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Norwalk, Weston, Westport, Wilton
Oakland, Ca	COUNTY(IES) Alameda, Contra Costa Ca
Orange County, Ny	COUNTY(IES) Orange Ny
Oxnard-Ventura, Ca	COUNTY(IES) Ventura Ca
Philadelphia, Pa-Nj	COUNTY(IES) Burlington, Camden, Gloucester Nj; Bucks, Chester, Delaware, Montgomery, Philadelphia Pa
Pittsburgh, Pa	COUNTY(IES) Alleghany, Fayette, Washington; Westmoreland Pa
Portland, Or	COUNTY(IES) Clackamas, Multnomah, Washington, Yamhill Or
Racine, Wi	COUNTY(IES) Racine Wi

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Riverside-San Bernardino, Ca	COUNTY(IES) Riverside, San Bernadin Ca
St. Louis, Mo-Il	COUNTY(IES) Clinton, Jersey, Madison, Monroe, St Clair Il; Franklin, Jefferson, St Charles, St Louis, St Louiscity Mo
Salem-Gloucester, Ma	COUNTY Essex, Ma (PART): TOWNS OF Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield, Wenham
San Diego, Ca	COUNTY(IES) San Diego Ca
San Francisco, Ca	COUNTY(IES) Marin, San Francisc, San Mateo Ca
San Jose, Ca	COUNTY(IES) Santa Clara Ca
Santa Cruz, Ca	COUNTY(IES) Santa Cruz Ca
Santa Rosa-Petaluma, Ca	COUNTY(IES) Sonoma Ca
Seattle, Wa	COUNTY(IES) King, Snohomish Wa
Stamford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Darien, Greenwich, New Canaan, Stamford
Tacoma, Wa	COUNTY(IES) Pierce Wa
Trenton, Nj	COUNTY(IES) Mercer Nj
Vallejo-Fairfield-Napa, Ca	COUNTY(IES) Napa, Solano Ca
Vancouver, Wa	COUNTY(IES) Clark Wa
Vineland-Millville-Bridgeton, Nj	COUNTY(IES) Cumberland Nj
Washington, Dc-Md-Va	COUNTY(IES) Washington Dc; Calvert, Charles, Frederick, -columbia(u), Montgomery, Prince Georg Md; Arlington, Fairfax, Loudoun, Princewillia, Stafford, Alexandria, Fairfax City, Falls Church, Manassas, Manassas Prk Va
Wilmington, De-Nj-Md	COUNTY(IES) New Castle De; Cecil Md; Salem Nj

[FR Doc. 91-28343 Filed 11-25-91; 8:45 am]
BILLING CODE 4210-32-C

federal register

Tuesday
November 26, 1991

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Surface Coal Mining and Reclamation Operations; Underground Mining Activities; Temporary Cessation of Operations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

RIN 1029-AB33

Surface Coal Mining and Reclamation Operations; Underground Mining Activities; Temporary Cessation of Operations

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to amend its regulations governing surface coal mining and reclamation operations and underground mining activities that cease operations on a temporary basis under an approved permit. The proposed rule would require that before temporarily ceasing surface or underground coal mining operations for a period of more than 30 days under an approved permit or portion(s) thereof, a permittee would first be required to submit an application to the regulatory authority for approval. The proposed rule establishes minimum information requirements for applications; criteria and a time limit for the regulatory authority's decision to approve or disapprove applications; pre-approval inspections to determine compliance with the regulatory program; and procedures for review of temporary cessation status at periodic intervals. This rule is necessary to ensure that reclamation of mined land is not unnecessarily delayed, that any operation for which temporary cessation is being requested is in compliance with applicable environmental performance standards, and to ensure that hazards to the public health and safety will be eliminated during the period of temporary cessation.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. eastern time on January 27, 1992.

Public Hearings: Upon request, OSM will hold a public hearing on the proposed rule in Washington, DC at 9:30 a.m. local time on January 20, 1991. Upon request, OSM will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and dates to be announced prior to any requested hearings. OSM will accept requests for public hearings until 5 p.m. eastern time on December 26, 1991. Individuals wishing to attend, but not testify at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street, NW., Washington DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue NW., Washington DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington DC. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2550 (Commercial), 268–2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to the issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The time, date and address scheduled for the hearing in Washington, DC, are previously specified in this notice (see "**DATES**" and **ADDRESSES**"). The times, dates and addresses for hearings in other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Stocker (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. eastern time [December 26, 1991.] If no one has contacted Mr. Stocker to express an interest in participating in a hearing at a given location by the end of that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber a ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber with a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also request that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act) establishes various requirements designed to protect the environment and the health and safety of the public from the adverse effects of surface coal mining operations and underground mining activities. To ensure these requirements would continue to be met during periods of inactivity when surface or underground coal mining and reclamation operations cease on a temporary basis, OSM promulgated rules at 30 CFR 816.131 for surface coal mining and reclamation operations, and at 30 CFR 817.131 for underground mining and reclamation activities. 44 FR 15414 and 15441 (March 13, 1979). Both rules are substantially identical. They require an operator to advise the regulatory authority of his intentions to temporarily cease operations by submitting a brief closure plan and to eliminate safety hazards and assure continued environmental protection at the site.

Approximately 1,140 operations, or over seven percent, of all surface and underground mining operations currently are in temporary cessation status. The effect of temporarily ceasing a surface or underground coal mining and recalmation operation is that there will be a delay in the mining schedule

specified under the approved permit and a corresponding delay in the reclamation of any open pits, spoil piles, roads, or other disturbed areas that will be necessary to facilitate the resumption of mining activities. Consequently, the environment and the public are exposed to the effects of surface or underground mining for longer periods of time than originally planned and there will be a delay in achieving the postmining land use. Operations which are not in temporary cessation status are required by applicable Federal or State regulations to follow the mining schedules specified in the approved permits, and to reclaim mined areas contemporaneously with the active mining operations. Reclamation is normally required to be in accordance with specific time and distance criteria established by regualtion or the approved permit. Also, operations in temporary cessation status are eligible under 30 CFR 842.11 for a reduction in the number of minimum inspections required to be conducted by the regulatory authority each year. Inspections may be reduced from one complete inspection per calendar quarter and an average of one partial inspection per month required for active operations, to one complete inspection per calendar quarter.

In promulgating the existing rules, OSM recognized that temporary cessation of operations is relatively common and is sometimes necessary due to the nature of the coal mining business and the coal market itself. Moreover, section 515(b)(1) of the Act requires surface coal mining and reclamation operations to be conducted "so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining may be minimized." Under this performance standard if an operator cannot comply with a mining and reclamation schedule for legitimate business reasons, it would make no sense to require the closing and reclamation of the uncompleted mining operation when closing would economically preclude future recovery of remaining coal reserves or would require substantial redisturbance of reclaimed land in order to reopen operations. While these views have not changed, OSM believes that the existing rules need to be revised to prevent potential misapplication or abuse. This conclusion is based on concerns identified by OSM during ten years of experience in implementing these rules in States with Federal regulatory programs and in overseeing the implementation of analogous rules in regulatory programs administered by States.

OSM's concerns with the existing rules center on the absence of a formal process by which an operator must obtain regulatory authority approval of an application for temporary cessation based on relevant information, and on the absence of evaluative criteria guiding the decision to approve or disapprove an application. Under the existing rules, the operator need only submit to the regulatory authority a notice of intent that mining operations will cease for a period of more than twenty days. The notice of intent requires minimal information such as a statement of the exact number of acres that have been affected under the permit, the extent and type of reclamation that will have been accomplished on those areas, and identification of backfilling, regarding, revegetation, environmental monitoring and water treatment activities that will continue during the temporary cessation.

Although the preamble to the 1979 rules indicated that the notice of intent filed by the operator was subject to modification by the regulatory authority, neither the preamble nor the rules specify the standards by which a notice of intent must be evaluated or whether the regulatory authority may deny temporary cessation status upon finding that there is not a legitimate need, that environmental or public safety protection measures proposed during temporary cessation are not adequate, or that the operation is not in compliance with all requirements of the regulatory program and the approved permit. Indeed, the question of whether temporary cessation of operations is a right of the operator initiated by merely filing a notice of intent with the regulatory authority, and the question of the regulatory authority's role in administering the exiting rules are problematic because those questions may result in misapplication of the existing rules or lead to inconsistent application among the various regulatory authorities. The more specific concerns arising from the lack of a formal application and approval process are presented below.

(1) The existing rules do not require an operator to provide the reasons for proposed temporary cessation of operations so that the regulatory authority may evaluate the merits of those reasons. While OSM believes that it should avoid interfering with legitimate business decisions of coal operators to temporarily cease operations, it also believes that a regulatory authority must evaluate the merits of the reasons for a temporary cessation as necessary to ensure that postponement of reclamation which is incidental to temporary cessation of operations does not occur for reasons which are unrelated to legitimate business needs and that each term proposed for temporary cessation of reclamation is commensurate with the particular business reasons and needs for cessation of operations. Although it may be impractical to identify every valid reason for temporarily ceasing operations beyond 30 days, OSM believes that regulatory authorities should be provided guidance at least in the form of examples of reasons it does consider valid.

(2) The existing rules do not require an operator to submit information concerning the extent of the remaining coal reserves which will be recovered upon the resumption of mining, nor is the regulatory authority specifically required to determine if remaining reserves are sufficient to warrant temporary cessation. The entire concept of temporary cessation is predicated on the fact that mining and reclamation operations will resume and, therefore, economically viable coal reserves are necessary to gain or continue such status. To allow temporary cessation without a finding that economically viable coal reserves remain to be mined would amount to nothing more than a postponement of the requirement that mined land be reclaimed contemporaneous with mining.

(3) While the existing rules provide that an operator in temporary cessation status must effectively secure surface facilities, there is no requirement for the operator to submit a plan addressing this requirement or a requirement for the regulatory authority to evaluate the effectiveness of the operator's methods. Since the protection of the public health and safety from hazards created by mining operations is one of the main purposes of the Act, OSM believes this aspect of temporary cessation deserves careful consideration.

(4) The existing rules do not require a finding that an operator is in compliance with all requirements of the regulatory program and the approved permit before temporarily ceasing operations. Such a finding is particularly important with respect to contemporaneous reclamation. OSM believes that temporary cessation status should be considered a benefit which an operator may be granted only when it is demonstrated that reclamation is fully current with mining operations and either there are no unabated violations

or the operator is in the process of abating any violation to the satisfaction of the regulatory authority. OSM further believes that any compliance finding should be coupled with a field inspection in order to verify the extent to which an operation is in compliance with all applicable regulatory requirements and to ensure that those areas which must be left unreclaimed to facilitate the resumption of mining are minimized.

(5) The existing regulations do not require the regulatory authority to reevaluate the adequacy of the amount of bond filed with a permit before, or periodically during, temporary cessation. Without such a reevaluation it is possible that an operation could remain in temporary cessation status for several years during which time the value of the original bond may have substantially deflated to the point that it is no longer adequate to cover the cost of reclamation if it were to be performed by the regulatory authority in the event of bond forfeiture. Reevaluation of the bond both before temporary cessation begins, and periodically thereafter, is particularly important considering that many operators temporarily cease operations for financial reasons, the nature or extent of which is unknown to the regulatory authority.

(6) The existing regulations do not provide for periodic review of those operations in temporary cessation status. The average term that an operation is in temporary cessation is 2.3 years, but can range up to five years or more. There currently is no assurance that once an operation enters temporary cessation status, it remains qualified for that status. Without some periodic review to validate the justification for continued temporary cessation, the potential exists for reclamation to be delayed indefinitely for reasons unrelated to legitimate business needs. This would violate the requirement at 30 CFR 816.100/817.100 that reclamation efforts proceed as contemporaneously as practicable with mining operations.

(7) The existing rules do not specify under what conditions temporary cessation will terminate and thus, reinstate the operator's obligation to resume mining and reclamation operations to completion. The lack of such a provision could result in operations which intermittently resume mining for brief periods of time while delaying reclamation under the umbrella of temporary cessation status. Or, the lack of such a provision could allow temporary cessation status to continue even though a permit has expired due to the operator's failure to submit an application for permit renewal at least 120 days prior to expiration of the existing permit term in accordance with 30 CFR 774.15.

III. Discussion of Proposed Rule

Since the revisions being proposed for surface mines under 30 CFR 816.131 are substantially identical to those proposed for underground mining activities under 30 CFR 817.131, they will be presented together for ease of discussion. Any significant differences will be noted.

Sections 816.10/817.10—Information Collection

The proposed rule would revise existing §§ 816.10/817.10. Those sections contain a list of the existing information collection requirements in parts 816 and 817 and also the OMB clearance number indicating OMB approval of the information collection requirements. The proposed revision would update the list of sections containing information collection requirements by including the new requirements contained in this proposed rule. In addition, the proposed revision would list the estimated reporting burden per respondent for complying with the information collection requirements contained in part 816/817 and would list the addresses for OSM and OMB where comments on the information collection requirements contained in parts 816/817 may be sent.

Sections 816.131(a)(1)/817.131(a)(1)

Proposed paragraph (a)(1) would require that before temporarily ceasing surface or underground coal mining operations for a period of more than 30 days under an approved permit or portion(s) thereof, a permittee would first be required to submit a complete application to the regulatory authority for approval. The option of obtaining temporary cessation for only a designated portion(s) within an approved permit has been included to address situations where it is often necessary to temporarily cease only certain working areas within a permit area due to a change in the demand or market conditions associated with one or multiple coal seams. Once a complete application is submitted and accepted by the regulatory authority, the applicant may temporarily cease operations while the regulatory authority is processing the application in accordance with paragraphs (c) and (d) of the proposed rule. Finally, the requirement under this paragraph to submit an application prior to temporary cessation for more than 30 days would not apply where temporary cessation is planned on a regular basis in accordance with a specified schedule approved in the permit. This would accommodate operations which regularly cease on a temporary basis due to weather conditions or other factors known in advance.

Sections 816.131(a)(2)/817.131(a)(2)

This paragraph states that temporary cessation status does not relieve an operator from the obligations to comply with all requirements of the regulatory program and the approved permit. During the term of temporary cessation the operator would be required to continue environmental monitoring and maintenance activities, continue submission of required certifications and reports, continue completion of successive phases of reclamation, and abate any violations. The regulatory authority would be required to continue conducting the minimum number of required complete inspections, one per calendar quarter, and issue enforcement actions for any violations observed during those inspections.

Sections 816.131(a)(3)/817.131(a)(3)

Proposed paragraph (a)(3) would establish a 60-day time limit within which permittees of operations that are in temporary cessation on the effective date of this rule must apply for approval of temporary cessation under §§ 816.131(b)/817.131(b), if temporary cessation of such operations is anticipated to continue more than 60 days after the effective date of the rule. The time limit would expire 60 days after the effective date of this rule for operations within Federal program States or on Indian Lands, or in the case of operations in primacy States, 60 days after the date that the State program counterpart to this rule is effective under the State program. Operations which fail to apply within the 60 day period would be required to either immediately resume mining and reclamation operations or begin and complete final reclamation. OSM believes that this approach is both a reasonable and practical means of bringing existing operations into compliance with the provisions of the rule. Without such a provision, there could be hundreds of operations remaining in temporary cessation indefinitely without the added protection and safeguards afforded by this rule. Once a complete application is submitted within the required time period, the permittee may continue in temporary cessation status while the regulatory authority is processing the application.

Sections 816.131(b)/817.131(b)

Proposed paragraph (b) establishes the following minimum information requirements for an application to temporarily cease operations.

(1) Proposed §§ 816.131(b)(1)/817.131(b)(1) would require basic information concerning the applicant's name, address, telephone number and would also require similar information for any operator or other representative who will be responsible for safety, maintenance, and environmental monitoring of the permit area during the period of temporary cessation.

(2) Proposed §§ 816.131(b)(2)/817.131(b)(2) would require, for each permit area or portion thereof in which temporary cessation is proposed, an explanation of the reasons temporary cessation is being requested and the anticipated period of time in which operations will remain in temporary cessation status. Examples of reasons that would be considered valid for temporary cessation beyond 30 days are found below under the discussion of §§ 816.131(d)/817.131(d).

(3) Proposed §§ 816.131(b)(3)/817.131(b)(3) would require a description of the methods which will be employed to effectively secure surface facilities against hazard to the public health and safety and the methods to be employed to restrict public access to the permit area during the period of temporary cessation. The applicant would need to identify all surface facilities and describe the methods proposed to secure each. In many cases, effectively restricting all access roads to the operation at junctions with public roads by use of locked gates, cables, or barricades may alone be adequate to ensure against hazards to the public.

(4) Proposed §§ 816.131(b)(4)/817.131(b)(4) would require a description of the environmental monitoring and maintenance activities which will continue during the period of temporary cessation. This would include activities such as water sampling and water quality reporting, maintenance and resupply of effluent treatment facilities and maintenance of erosion and sediment control structures.

(5) Proposed § 817.131(b)(5) would, for underground mines, require a description of the methods to be employed to effectively support, maintain, and restrict entry into all surface access to underground mines. Since most surface access openings to underground mines are normally required for the overall operation of the mine once production resumes, sealing of underground access openings would not normally be required.

(6) Proposed §§ 816.131(b)(5)/817.131(b)(6) would require a description of the types of equipment which will be made readily available for use when necessary to perform maintenance, reclamation, or violation abatement work. While the proposed rule does not impose a mandatory requirement that suitable equipment remain on site, it is important that the regulatory authority be assured that suitable equipment will either be present or can be moved onto the operation without any significant delays in order to meet progressive reclamation schedules and promptly abate any violations.

(7) Proposed §§ 816.131(b)(6)/817.131(b)(7) would require the permittee to include a certified map showing certain information necessary to assist the regulatory authority in evaluating the merits of the application for temporary cessation. Paragraph (i) would require the map to show the location and extent of the remaining coal reserves authorized for recovery under the approved permit where surface or underground mining operations will resume upon termination of temporary cessation. Paragraph (ii) would require the map to show the location and extent of all excavations, highwalls, spoil piles, excess spoil or waste disposal structures, roads, or other disturbed areas which will not be backfilled, graded, or otherwise reclaimed during the period of temporary cessation. These would be areas for which a delay in meeting the standards for contemporaneous reclamation under 30 CFR 816.100/817.100 would be necessary because they will be required to facilitate resumption of mining operations. Paragraph (iii) would require the map to show the location and extent of all areas which have been backfilled and graded and those which have been topsoiled and revegetated.

(8) Proposed §§ 816.131(b)(7)/817.131(b)(8) would require the permittee to list all outstanding State and Federal notices of violation and cessation orders pertaining to environmental protection incurred in connection with the permit for which temporary cessation is being requested. For each notice or order listed, the permittee must explain whether an administrative or judicial appeal has been filed and is currently pending or whether actions are currently underway to abate the violations within the time prescribed in the notice or order. This information is necessary for the regulatory authority to assess the degree of compliance of the operation and determine whether the permittee is abating any outstanding violations to the satisfaction of the regulatory authority.

(9) Proposed §§ 816.131(b)(8)/817.131(b)(9) would require the permittee to provide a current estimate of the cost to reclaim the affected area in accordance with the reclamation plan approved in the permit. This information is necessary to assist the regulatory authority in evaluating whether the amount of bond filed with the permit is adequate at current costs in the event of forfeiture.

Sections 816.131(c)/817.131(c)

This paragraph requires the regulatory authority to conduct an inspection of the permit area for which temporary cessation is being requested after receipt of an administratively complete application, but prior to making a decision to approve or disapprove an application. The purpose of the inspection is to evaluate the accuracy of the information submitted in the application and map(s), evaluate the effectiveness of methods proposed to secure facilities against hazards to the public health and safety, evaluate the extent to which the entire operation is in compliance with all applicable performance standards and permit conditions, and to evaluate the degree of progress in abating any outstanding violations.

Sections 816.131(d)/817.131(d)

Proposed paragraph (d) sets forth the minimum criteria by which the regulatory authority must evaluate an application for temporary cessation. Temporary cessation shall be approved only if the regulatory authority finds in writing that all the criteria have been met. The regulatory authority's written finding would need to address each of the criteria separately rather than addressing them summarily.

(1) Proposed §§ 816.131(d)(1)/817.131(d)(1) would require the regulatory authority to find that the applicant has demonstrated that a valid need exists for ceasing surface or underground mining and reclamation operations on a temporary basis for more than 30 days and that the time period proposed for temporary cessation is consistent with that need. To guide the regulatory authority in making this finding without unreasonably intruding on the legitimate business decisions of coal operators, six examples of valid reasons for temporary cessation beyond 30 days are proposed. Those examples include, but are not limited to, adverse coal market conditions; labor disputes; unusual weather conditions or catastrophes; major equipment

breakdowns; transfer, sale or assignment of mining rights; or temporary mine closure orders issued by other regulatory agencies. While these examples represent the most common reasons encountered by OSM for temporary cessation of operations beyond 30 days, the regulatory authority may accept other reasons on a case-by-case basis provided it is satisfied that such reasons are related to a legitimate business need and that reclamation will not be unnecessarily deferred. OSM is specifically requesting public comments concerning the examples being proposed, examples of other valid reasons which should be included, or examples of reasons which should not be considered valid.

(2) Proposed §§ 816.131(d)(2)/817.131(d)(2) would require the regulatory authority to find that there is a reasonable presumption that surface or underground mining operations can profitably resume based on information submitted by the applicant concerning the extent, thickness, elevation, and quality of the remaining coal reserves authorized for recovery under the approved permit. This provision is intended to ensure that minable reserves remain and that circumstances have not changed at the operation which would affect future recovery of remaining reserves.

(3) Proposed §§ 816.131(d)(3)/817.131(d) would require the regulatory authority to find that the methods proposed by the applicant for securing surface facilities and restricting access to the operation will be effective in preventing hazards to the health and safety of the public during the period of temporary cessation.

(4) Proposed §§ 816.131(d)(4)/817.131(d)(4) would require a finding that backfilling, grading, topsoiling, and revegetation are contemporaneous with mining operations as required under the approved regulatory program and permit, except in those areas specifically designated on the application map for which a delay in meeting such standards is necessary to facilitate the resumption of mining operations. During the inspection of the operation under paragraph (c) of the proposed rule, the regulatory authority would be responsible for verifying the accuracy of those areas designated for the reclamation exception in order to ensure such areas are kept to the minimum necessary to facilitate the resumption of mining operations.

(5) Proposed §§ 816.131(d)(5)/817.131(d)(5) would require the regulatory authority to conduct a reevaluation of the performance bond in accordance with 30 CFR 800.15 to ensure that the amount of bond the applicant currently has filed with the permit is sufficient under the regulatory program to complete the reclamation plan if the remaining work had to be performed by the regulatory authority in the event of forfeiture.

(6) Proposed §§ 816.131(d)(6)/817.131(d)(6) would require the regulatory authority to review any outstanding notices of violation or cessation orders pertaining to environmental protection incurred in connection with the permit for which temporary cessation is being requested. The regulatory authority must find that any such notices or orders are either stayed pursuant to an administrative or judicial appeal proceeding or are in the process of being abated to the satisfaction of the appropriate regulatory authority.

(7) Proposed §§ 816.131(d)(7)/817.131(d)(7) would require the regulatory authority to make a finding that it has considered the need for imposing special conditions on a site-specific basis as necessary to ensure protection of the public health and safety and the environment and to ensure that mining and reclamation is not unnecessarily delayed by reason of temporary cessation.

Sections 816.131(e)/817.131(e)

Proposed paragraph (e) would establish a requirement that the regulatory authority review each approved and outstanding application for temporary cessation as part of the midterm permit review required under § 774.11 and as part of the permit renewal process required under § 774.15. At the conclusion of each review, the regulatory authority would be required to make a written finding approving or disapproving continuation of temporary cessation status considering each of the decision criteria under paragraph (d) of the proposed rule. OSM believes that some form of periodic reevaluation of temporary cessation status is necessary to ensure that all of the approval criteria required for the regulatory authority's written finding under paragraph (d) of this proposed rule remain satisfied. By linking periodic reviews to the midterm and renewal reviews already required by regulation, generally at 2.5 and 5 year intervals respectively, the rule provides an efficient method for achieving this goal without imposing an excessive administrative burden on the regulatory authorities or the industry. When review of temporary cessation status required under this paragraph is conducted concurrently with the permit renewal process, the public notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b), and 778.21 will apply. This opportunity for public participation may be particularly important in protecting the interests of private landowners who, in granting mining rights, relied on the expectation that their mined land would be returned to an agricultural or other planned postmining land use in accordance with the mining and reclamation schedule specified in the approved permit.

Sections 816.131(f)/817.131(f)

This paragraph would establish the conditions under which an approved term of temporary cessation would terminate. Proposed paragraph (f)(1) provides that approval of temporary cessation will terminate upon the resumption of surface or underground mining activities. Resumption of surface or underground mining activities would include any excavation or other activities conducted for the purpose of exposing or removing coal, but would not include environmental protection maintenance activities, backfilling and grading, or abatement of violations. Proposed paragraph (f)(2) provides that approval of temporary cessation will terminate upon the failure of a permittee in temporary cessation status on the effective date of this rule to submit the application required under paragraph (a)(4). Submission of this application is necessary in order for existing operations to continue in approved temporary cessation status beyond 60 days after the effective date of this rule. Proposed paragraph (f)(3) would terminate approved temporary cessation status upon a written finding made by the regulatory authority under paragraph (d) that continuation of temporary cessation status beyond either the midterm permit review or the permit renewal period is disapproved. Such a finding would be made as a result of the periodic review of temporary cessation status required under paragraph (e) of this proposed rule. Finally, proposed paragraph (f)(4) would terminate approval of temporary cessation upon the failure of the permittee to submit to the regulatory authority an application for permit renewal in accordance with § 774.15 at least 120 days prior to expiration of the existing permit term.

Sections 816.131(g)/817.131(g)

This paragraph would require that within 30 days after termination of approved temporary cessation status pursuant to paragraphs (f)(2), (f)(3), or (f)(4) of this proposed rule, the permittee shall resume surface or underground

mining and reclamation operations or, if a decision has been made to discontinue further mining or if the permit has expired, begin and complete reclamation in accordance with § 816.132/817.132.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The proposed rules apply through cross-referencing in those States with Federal programs and on Indian lands. The States with Federal programs are California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The Indian lands program appears at 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected as changes to the national rules or as specific amendments to any or all of the Federal programs or the Indian lands program.

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. The information collection and reporting burden for coal mine operators under this proposed rule is estimated to be 12 hours per initial application for temporary cessation and 4 hours at the time of either a midterm permit review or permit renewal. The information collection and reporting burden for regulatory authorities to process an initial application for temporary cessation is estimated to be 26 hours broken down as follows: 8 hours to conduct the required inspection, 8 hours to make the written finding, and 10 hours for administrative processing. For conducting a reevaluation of temporary cessation status at the time of midterm permit review or at the time of permit renewal, processing time is estimated to be 18 hours since an inspection would not be required. The above estimates are based on OSM's experience in processing applications under the Tennessee Federal Program. The estimated burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden estimates are the same for part 816 and part 817. The burden estimates listed above are different from those listed in §§ 816.10 and 817.10 of the proposed rule. The estimates listed in §§ 816.10 and 817.10 are for all of the information collection requirements contained in part 816 and part 817 while the burden estimates given above are only for the proposed revisions in §§ 816.131 and 817.131. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining, Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029–0047 and 1029–0048), Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* The proposed rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of this rule.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The author of this rule is Daniel E. Stocker, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2550.

List of Subjects

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, based on the foregoing preamble it is proposed to amend 30 CFR parts 816 and 817 as follows.

Dated: August 9, 1991.

David C. O'Neal,

Assistant Secretary, Land and Minerals Management.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. The authority citation for part 816 continues to read as follows:

Authority: Public Law 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Public Law 98–146, 30 U.S.C. 1257; and Public Law 100–34.

2. Section 816.10 is revised to read as follows:

§ 816.10 Information collection.

The collections of information contained in 30 CFR 816.46(c)(4), 816.46(r), 816.46(t), 816.49(h), 816.49(i), 816.52(a), 816.52(b)(1)(ii) and (iii), 816.53(a), 816.62, 816.64, 816.65(a)(2)(iii), 816.67, 816.68, 816.71(j), 816.82(a)(4), 816.82(b), 816.87, 816.91(b), 816.95, 816.116, 816.117(b)(4), 816.17(c)(1) and (3), 816.131(b), (d) and (e), 816.133(c)(1) through (4), 816.133(c)(8) and (9), 816.150(d)(1), 816.152(d)(13), 816.160(d)(1) and 816.163(d) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0047. The information will be used to meet the requirements of section 516 of Public Law 95–87, which provides that permittees conducting surface coal mining operations shall meet applicable performance standards of the Act. This information will be used by the regulatory authority in monitoring and inspecting surface mining activities. The obligation to respond is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden

estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining, Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1029–0047, Washington, DC 20503.

3. Section 816.131 is and to read as follows:

§ 816.131 Cessation of operations: Temporary.

(a) *General.* (1) Before temporarily ceasing surface coal mining and reclamation operations for a period of 30 days or more under an approved permit, or portion(s) thereof, a permittee shall first submit a complete application to the regulatory authority for approval. Upon submission of a complete application, a permittee may proceed to temporarily cease operations while the regulatory authority processes the application in accordance with paragraphs (c) and (d) of this section. The requirements of this section do not apply where temporary cessation is planned on a regular basis in accordance with a specified schedule approved as an integral part of a permit.

(2) Temporary cessation of operations shall not relieve a person of their obligation to comply with any provisions of the applicable regulatory program or approved permit, except as may be provided under paragraph (d)(4) of this section.

(3) Any permittee of a surface coal mining and reclamation operation that is in temporary cessation on the effective date of this rule, or the effective date of the State program counterpart to this rule, shall submit an application for regulatory authority approval in accordance with this section in order to continue in temporary cessation status beyond 60 days after that effective date. The permittee must submit the application within 60 days of the effective date of this rule, or within 60 days of the effective date of the State program counterpart to this rule.

(b) *Application requirements.* Each application for approval of temporary cessation of operations beyond 30 days shall be in the form required by the regulatory authority and shall contain at a minimum the following information:

(1) The name, address, telephone and permit number of the permittee and the name, address, and telephone number of the operator or other representative who will be responsible for safety, maintenance, and environmental monitoring of the permit area during the period of temporary cessation.

(2) For each area in which temporary cessation is proposed beyond 30 days, an explanation of the reasons why temporary cessation is being requested and the anticipated period of time in which operations will remain under temporary cessation.

(3) A description of the methods which will be employed to effectively secure surface facilities, including equipment and storage areas, against hazard to the public health and safety and the methods which will be employed to restrict public access to the permit area, or relevant portion thereof, during the period of temporary cessation.

(4) Identification of the environmental monitoring and maintenance activities which will continue during the period of temporary cessation with respect to water quality and erosion and sediment control.

(5) A description of the types of equipment which will remain on the permit area during the period of temporary cessation necessary to perform routine maintenance, continue required reclamation activities, or to perform remedial action if violations occur. If none will remain, a description of the types of equipment which will be readily available for use at the operation if necessary.

(6) A map or maps of the permit area at a scale of 1:6,000 or larger and certified in accordance with § 779.25(b), showing:

(i) The location, extent and elevations of the remaining coal reserves authorized for recovery under the approved permit where surface coal mining and reclamation operations will resume upon termination of temporary cessation;

(ii) The location and extent of all excavations, highwalls, spoil piles, fills, roads, or other disturbed areas which will not be backfilled and graded or otherwise reclaimed while operations temporarily cease because a delay in meeting the standards for contemporaneous reclamation will be necessary in order to later facilitate the resumption of surface coal mining operations; and

(iii) The location and extent of all areas which have been backfilled and graded and those which have been topsoiled and revegetated.

(7) A list of all outstanding State and Federal notices of violation and cessation orders pertaining to environmental protection incurred in connection with the permit for which temporary cessation is being requested and for each, a description of any appeal proceedings or the actions being taken to abate the violation(s).

(8) A current estimate of the cost to reclaim the entire affected area in accordance with the approved reclamation plan.

(c) *Inspection by the regulatory authority.* After receipt of an administratively complete application, but prior to making a decision to approve or disapprove an application, the regulatory authority shall conduct an inspection of the permit area for which temporary cessation of operations beyond 30 days is being requested. The inspection shall evaluate the accuracy of the information submitted in the application and map(s), the methods proposed to secure facilities against hazards to the public health and safety and to restrict access to the permit area, the extent to which the entire operation is in compliance with all applicable performance standards and permit conditions, and the degree of progress in abating any outstanding violations. The information obtained by the inspection shall be used by the regulatory authority to require any necessary modification to the application and to support its decision to approve or disapprove an application for temporary cessation.

(d) *Decisions on applications.* Within 60 days after receipt of a complete and accurate application, the regulatory authority shall approve or disapprove any request for a temporary cessation of over 30 days' duration. Temporary cessation shall be approved only if the regulatory authority makes a written finding showing that each of the following criteria has been met:

(1) The applicant has demonstrated that a valid need exists for ceasing surface coal mining operations on a temporary basis and that the time period proposed for temporary cessation is consistent with that need. Valid reasons for ceasing operations beyond 30 days may include, but are not limited to: adverse coal market conditions; labor disputes; unusual weather conditions or catastrophes; major equipment breakdowns; transfer, sale or assignment of mining rights; or temporary mine closure orders issued by other regulatory agencies.

(2) Based on the extent, elevation, thickness and quality of the remaining coal reserves authorized for recovery under the approved permit, there is a reasonable presumption that an economically viable surface coal mining and reclamation operation can be resumed.

(3) The methods proposed for securing surface facilities and restricting access to the permit area, or relevant portions thereof, will effectively ensure against

hazards to the health and safety of the public.

(4) Backfilling, grading, topsoiling and revegetation are contemporaneous with mining operations as required under the approved regulatory program and permit, except in those areas specifically designated on the application map for which a delay in meeting such standards is necessary to facilitate the resumption of surface coal mining operations.

(5) Based on a reevaluation of the performance bond in accordance with § 800.15, the amount of bond filed with the permit is sufficient under the regulatory program to assure completion of the reclamation plan if the remaining work has to be performed by the regulatory authority in the event of forfeiture.

(6) Any outstanding State and Federal notices of violation and cessation orders pertaining to environmental protection incurred in connection with the permit for which temporary cessation is being requested are either stayed pursuant to an administrative or judicial appeal proceeding or are in the process of being abated to the satisfaction of the regulatory authority.

(7) The need for additional conditions has been considered and conditions have been imposed where necessary to ensure protection of the public health and safety and the environment and to ensure that mining and reclamation is not unnecessarily delayed by reasons of temporary cessation.

(e) *Review of temporary cessation status.* The regulatory authority shall review each approved and outstanding application for temporary cessation as part of the midterm permit review required under § 774.11 and as part of the permit renewal process required under § 774.15. At the conclusion of each review, the regulatory authority shall make a written finding approving or disapproving continuation of temporary cessation status based on the decision criteria set forth in paragraph (d) of this section.

(f) *Termination of temporary cessation status.* Approval under this section to temporarily cease operations on an entire permit, or portion(s) thereof, shall terminate upon:

(1) The resumption of surface coal mining and reclamation operations;

(2) The failure of a permittee of an operation in temporary cessation on the effective date of this rule to submit an application for regulatory authority approval in accordance with this section within 60 days of the effective date of this rule, or within 60 days of the effective date of the State counterpart to this rule;

(3) The written disapproval by the regulatory authority to continue temporary cessation status pursuant to the midterm or permit renewal review required under paragraph (e) of this section; or

(4) The failure of the permittee to submit to the regulatory authority an application for permit renewal in accordance with § 774.15 at least 120 days prior to expiration of the existing permit term.

(g) Within 30 days after termination of temporary cessation status pursuant to paragraphs (f)(2), (f)(3), or (f)(4) of this section, the permittee shall resume surface coal mining and reclamation operations, or if mining will not continue or if the permit has expired, begin and subsequently complete reclamation of the entire permit area within a reasonable time pursuant to § 816.132.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

4. The authority citation for part 817 continues to read as follows:

Authority: Public Law 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Public Law 98–146, 30 U.S.C. 1257; and Public Law 100–34.

5. Section 817.10 is revised to read as follows:

§ 817.10 Information collection.

The collections of information contained in 30 CFR 817.46(c)(4), 817.46(r), 817.46(t), 817.49(h), 817.49(i), 817.52(a), 817.52(b)(1)(ii) and (iii), 817.53(a), 817.62, 817.65(b)(2)(iii), 817.67, 817.68, 817.71(j), 817.82(a)(4), 817.82(b), 817.87, 817.91(b), 817.95, 817.116, 817.117(b)(4), 817.117(c)(1) and (3), 817.131(b), (d) and (e), 817.133(c)(1) through (4), 817.133(c)(8) and (9), 817.150(d)(1), 817.152(d)(13), 817.160(d)(1) and 817.163(d) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0048. The information will be used to meet the requirements of section 516 of Public Law 95–87, which provides that permittees conducting surface coal mining operations shall meet applicable performance standards of the Act. This information will be used by the regulatory authority in monitoring and inspecting surface mining activities. The obligation to respond is required to obtain a benefit in accordance with Public Law 95–87.

Public reporting burden for this information is estimated to average 25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining, Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1029–0048, Washington, DC 20503.

6. Section 817.131 is revised to read as follows:

§ 817.131 Cessation of operations: Temporary.

(a) *General.* (1) Before temporarily ceasing underground mining and reclamation activities for a period of 30 days or more under an approved permit, or portion(s) thereof, a permittee shall first submit a complete application to the regulatory authority for approval. Upon submission of a complete application, a permittee may proceed to temporarily cease operations while the regulatory authority processes the application in accordance with paragraphs (c) and (d) of this section. The requirements of this section do not apply where temporary cessation is planned on a regular basis in accordance with a specified schedule approved as an integral part of a permit.

(2) Temporary cessation of operations shall not relieve a person of their obligation to comply with any provisions of the applicable regulatory program or approved permit, except as may be provided under paragraph (d)(4) of this section.

(3) Any permittee of an underground mining and reclamation operation that is in temporary cessation on the effective date of this rule, or the effective date of the State program counterpart to this rule, shall submit an application for regulatory authority approval in accordance with this section in order to continue in temporary cessation status beyond 60 days after that effective date. The permittee must submit the application within 60 days of the effective date of this rule, or within 60 days of the effective date of the State program counterpart to this rule.

(b) *Application requirements.* Each application for approval of temporary cessation of operations beyond 30 days shall be in the form required by the regulatory authority and shall contain at a minimum the following information:

(1) The name, address, telephone and permit number of the permittee and the name, address, and telephone number of the operator or other representative who will be responsible for safety,

maintenance, and environmental monitoring of the permit area during the period of temporary cessation.

(2) For each area in which temporary cessation beyond 30 days is proposed, an explanation of the reasons why temporary cessation is being requested and the anticipated period of time in which operations will remain under temporary cessation.

(3) A description of the methods which will be employed to effectively secure surface facilities, including equipment and storage areas, against hazard to the public health and safety and the methods which will be employed to restrict public access to the permit area, or relevant portion thereof, during the period of temporary cessation.

(4) Identification of the environmental monitoring and maintenance activities which will continue during the period of temporary cessation with respect to water quality and erosion and sediment control.

(5) A description of the methods which will be employed to effectively support, maintain, and restrict entry into, all surface access openings to underground mines.

(6) A description of the types of equipment which will remain on the permit area during the period of temporary cessation necessary to perform routine maintenance, continue required reclamation activities, or to perform remedial action if violations occur. If none will remain, a description of the types of equipment which will be readily available for use at the operation if necessary.

(7) A map or maps of the permit area at a scale of 1:6,000 or larger and certified in accordance with § 783.25(b), showing:

(i) The location and extent of the areas affected by underground mining prior to the anticipated date of temporary cessation and the location and extent of the remaining coal reserves authorized for recovery under the approved permit where underground mining activities will resume upon termination of temporary cessation.

(ii) The location and extent of all surface excavations, highwalls, spoil piles, fills, coal waste disposal areas, roads, or other disturbed surface areas which will not be backfilled and graded or otherwise reclaimed while operations temporarily cease because a delay in meeting the standards for contemporaneous reclamation will be necessary in order to later facilitate the resumption of underground mining and reclamation activities.

(iii) The location and extent of all areas which have been backfilled and graded and those which have been topsoiled and revegetated.

(8) A list of all outstanding State and Federal notices of violation and cessation orders pertaining to environmental protection incurred in connection with the permit for which temporary cessation is being requested and for each, a description of any appeal proceedings or the actions being taken to abate the violation(s).

(9) A current estimate of the cost to reclaim the entire affected area in accordance with the approved reclamation plan.

(c) *Inspection by the regulatory authority.* After receipt of an administratively complete application, but prior to making a decision to approve or disapprove an application, the regulatory authority shall conduct an inspection of the permit area for which temporary cessation of operations beyond 30 days is being requested. The inspection shall evaluate the accuracy of the information submitted in the application and map(s), the methods proposed to secure surface facilities and underground access openings against hazards to the public health and safety, the methods proposed to restrict access to the permit area, the extent to which the entire operation is in compliance with all applicable performance standards and permit conditions, and the degree of progress in abating any outstanding violations. The information obtained by the inspection shall be used by the regulatory authority to require any necessary modification to the application and to support its decision to approve or disapprove an application for temporary cessation.

(d) *Decisions on applications.* Within 60 days after receipt of a complete and accurate application, the regulatory authority shall approve or disapprove any request for a temporary cessation of over 30 days' duration. Temporary cessation shall be approved only if the regulatory authority makes a written finding showing that each of the following criteria has been met:

(1) The applicant has demonstrated that a valid need exists for ceasing underground mining activities on a temporary basis and that the time period proposed for temporary cessation is commensurate with that need. Valid reasons for cessation of operations beyond 30 days may include, but are not limited to: adverse coal market conditions; labor disputes; unusual weather conditions or catastrophes; major equipment breakdowns; transfer, sale or assignment of mining rights; or temporary mine closure orders issued by other regulatory agencies.

(2) Based on the extent, thickness and quality of the remaining coal reserves authorized for recovery under the approved permit, there is a reasonable presumption that underground mining and reclamation activities can be resumed.

(3) The methods proposed for securing surface facilities and restricting entry to underground access openings and the permit area, or relevant portions thereof, will effectively protect against hazards to the health and safety of the public.

(4) Backfilling, grading, topsoiling and revegetation are contemporaneous with mining operations as required under the approved regulatory program and the approved permit, except in those areas specifically designated on the application map for which a delay in meeting such standards is necessary to facilitate the resumption of underground mining and reclamation activities.

(5) Based on a reevaluation of the performance bond in accordance with § 800.15, the amount of bond filed with the permit is sufficient under the regulatory program to assure completion of the reclamation plan if the remaining work has to be performed by the regulatory authority in the event of forfeiture.

(6) Any outstanding State and Federal notices of violation and cessation orders pertaining to environmental protection incurred in connection with the permit for which temporary cessation is being requested are either stayed pursuant to an administrative or judicial appeal proceeding or are in the process of being abated to the satisfaction of the regulatory authority.

(7) The need for additional conditions has been considered and conditions have been imposed where necessary to ensure protection of the public health and safety and the environment and to ensure that mining and reclamation is not unnecessarily delayed by reason of temporary cessation.

(e) *Review of temporary cessation status.* The regulatory authority shall review each approved and outstanding application for temporary cessation as part of the midterm permit review required under § 774.11 and as part of the permit renewal process required under § 774.15. At the conclusion of each review, the regulatory authority shall make a written finding approving or disapproving continuation of temporary cessation status based on the decision criteria set forth in paragraph (d) of this section.

(f) *Termination of temporary cessation status.* Approval under this section to temporarily cease operations

on an entire permit, or portion(s) thereof, shall terminate upon:

(1) The resumption of underground mining and reclamation activities; or

(2) The failure of a permittee of an operation in temporary cessation on the effective date of this rule to submit an application for regulatory authority approval in accordance with this section within 60 days of the effective date of this rule, or within 60 days of the effective date of the State program counterpart to this rule

(3) The written disapproval by the regulatory authority to continue temporary cessation status pursuant to the midterm or permit renewal review required under paragraph (e) of this section; or

(4) The failure of the permittee to submit to the regulatory authority an application for permit renewal in accordance with § 774.15 at least 120 days prior to expiration of the existing permit term.

(g) Within 30 days after termination of temporary cessation status pursuant to paragraphs (f)(2), (f)(3), or (f)(4) of this section, the permittee shall resume underground mining and reclamation activities, or if mining will not continue or if the permit has expired, begin and subsequently complete reclamation of the entire permit area within a reasonable time pursuant to § 817.132.

[FR Doc. 91-28372 Filed 11-25-91; 8:45 am]

BILLING CODE 4310-05-M

federal register

Tuesday
November 26, 1991

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 803 and 807

Medical Devices; Medical Device, User Facility, Distributor, and Manufacturer Reporting, Certification, and Registration; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 807

[Docket No. 91N-0295]

Medical Devices; Medical Device, User Facility, Distributor, and Manufacturer Reporting, Certification, and Registration

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a tentative final rule to require that device user facilities and distributors, including importers, submit reports to FDA and to the manufacturers, of deaths, serious illnesses and serious injuries related to medical devices. FDA is authorized to issue regulations implementing reporting requirements for user facilities and distributors by certain provisions of the Safe Medical Devices Act of 1990 (the SMDA). This tentative final rule also amends existing reporting requirements for manufacturers to conform them with the proposed reporting requirements for user facilities and distributors, and requires distributors and manufacturers to report certain malfunctions that may cause a death, serious illness or serious injury. The tentative final rule also requires foreign manufacturers to be subject to the same reporting requirements as domestic manufacturers. FDA is designating this document a tentative final rule, although under the Administrative Procedure Act it is a proposed rule. Because of the statutory deadlines discussed below, this "tentative final rule" alerts the public not only to the agency's interest in receiving comments, but also to the need for device user facilities, distributors, and other affected persons to begin preparing for compliance.

DATES: Written comments by January 27, 1991. FDA intends that the final rule based upon this tentative final rule become effective 30 days after publication of the final rule. However, whether or not a rule has been published, reporting by device user facilities is required on November 28, 1991, as provided in the SMDA. Thus, in the event a final rule has not been published by November 28, 1991, the provisions in the tentative final rule that relate to device user facility reporting will become the agency's guidance to the public on how the statute should be implemented until a final rule is promulgated and becomes effective. For distributor reporting, the statute directs that, in the event a final rule is not published by May 28, 1992, the provisions in this tentative final rule relating to distributor reporting will become the final rule on that date. In any event, the agency will publish the full text of the final rule, to become effective 30 days after publication in the **Federal Register**, with respect to all categories of persons subject to reporting.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Chester T. Reynolds, Center for Devices and Radiological Health (HFZ-306), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1156.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority and Legislative History

The current regulatory framework for medical device reporting requirements is the result of three statutes which include:

(1) The Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 321-394) (the act);

(2) The Medical Device Amendments of 1976 (Pub. L. 94-295) (1976 amendments), which amended the act to establish the first comprehensive framework for the regulation of medical devices; and

(3) The SMDA (Pub. L. 101-629), which amended the act to correct noted problems with the implementation and enforcement of the 1976 amendments.

The 1976 amendments, by adding section 519 of the act (21 U.S.C. 360i), granted FDA the authority to issue regulations to require manufacturers, importers, and distributors to maintain such records, make such reports, and provide such information to FDA as may reasonably be necessary to ensure that devices are not adulterated or misbranded and are otherwise safe and effective for human use. The legislative history of the 1976 amendments reflects clear congressional intent to permit FDA to require, under the authority of section 519 of the act, device manufacturers, importers, and distributors to report to FDA product defects and adverse effects of the firms' devices. H. Rept. 853, 94th Cong., 2d sess. 23 (1976). Among other things, section 519 of the act states that any reporting requirement established under the authority of that section: (1) May not be unduly burdensome (considering the cost of compliance and the need for the requirement); (2) shall state the purpose for any required report or information and identify to the fullest extent practicable such report or information; (3) may not, except in certain circumstances, require the disclosure of a patient's identity; and (4) may not, except in certain circumstances, require the manufacturer, distributor, or importer of a class I device to maintain records, or to submit information not in its possession, unless such report or information is necessary to determine whether a device is misbranded or adulterated. The House Report cautions, however, that these limitations "should not be construed * * * as limiting the Secretary's authority to obtain information needed to insure that the public is protected from potentially hazardous devices." Id. at 24.

In discussing the notification provisions of section 518 of the act (21 U.S.C. 360h), the House Report, the principal legislative document on the amendments, states:

> The notification provision is similar to, and to some extent patterned after, comparable authority contained in the National Traffic and Motor Vehicle Safety Act of 1966, the Radiation Control for Health and Safety Act of 1968, and the Consumer Product Safety Act of 1972. These statutes also include requirements that manufacturers provide notification of defects in their products to appropriate Federal agencies. The Committee determined that a comparable provision in new section 518(a) with respect to devices would be unnecessary since the Secretary could require the reporting of such information under the recordkeeping and reporting authority provided in new section 519 of the Act.
>
> (H. Rept. 853, supra, at 21.)

In its discussion of section 519 of the act, the House Report lists examples of reasonable reporting requirements, including reports of defects, adverse reactions, and patient injuries. That Congress intended FDA to use its authority under section 519 of the act to protect the public from potentially hazardous devices, as well as devices with confirmed hazards, is also clear from the legislative history. Id. at 24.

In the **Federal Register** of September 14, 1984, 49 FR 36348, FDA issued the current medical device reporting (MDR) regulations (21 CFR part 803). The regulations require manufacturers and importers of medical devices, including diagnostic devices, to report to FDA whenever the manufacturer or importer becomes aware of information that reasonably suggests that one of its marketed devices: (1) May have caused or contributed to a death or serious

injury, or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Manufacturers must report deaths and serious injuries, by telephone, within 5 days after receiving the necessary information and submit a written report within 15 days. Manufacturers must report malfunctions that would be likely to cause or contribute to a death or serious injury by telephone or in writing within 15 days.

Since the enactment of the 1976 amendments, Congress has focused considerable attention on FDA's implementation and enforcement of the act with respect to medical devices. During this time, the General Accounting Office (GAO), Office of Technology Assessment (OTA), and Office of Inspector General of the Department of Health and Human Services (OIG) have conducted investigations and issued reports on problems associated with the significant weaknesses in FDA's information gathering ability and its followup mechanisms of information that is received. S. Rept. 513, 101st Cong., 2d sess. 15 (1990). A GAO study, for example, noted that although FDA has received more than a seven-fold increase in reports associated with device-related problems since the promulgation of the MDR regulation, serious under-reporting of device-related reportable events exists. GAO also noted that many firms are unaware of their obligation to report device-related deaths, injuries, and malfunctions to FDA, and that device-related deaths in hospitals are rarely reported to either FDA or the manufacturer. In fact, a 1986 GAO study showed that less than 1 percent of device problems occurring in hospitals are reported to FDA and that, the more serious the problem with the device, the less likely it was to be reported. A GAO followup study in 1989 concluded that, despite full scale implementation of the MDR regulations, serious shortcomings exist.

Congress concluded from its own hearings and investigations and from its review of the GAO, OTA, and OIG investigations and reports that the 1976 amendments were not always adequate to protect the public health. (H. Rept. 808, 101st Cong., 2d sess. 13–14 (1990); S. Rept. 513, 101st Cong., 2d sess. 13–16 (1990).) To correct these problems, Congress passed and the President, on November 28, 1990, signed into law the SMDA which amended the medical device provisions of the act.

The SMDA added section 519(b)(1) to the act to require that certain device user facilities (hospitals, nursing homes, ambulatory surgical facilities and outpatient treatment facilities) report deaths related to medical devices to FDA and to the manufacturer, if known. FDA may also, by regulation, include outpatient diagnostic facilities in this requirement. Serious illnesses and injuries are to be reported to the manufacturer or to FDA, if the manufacturer is not known. Reports must be made as soon as practicable but no later than 10 working days after the user facility becomes aware of an event. The responsibility for reporting is limited to events involving patients of the facility or employees of the facility. Each device user facility is also required to submit to FDA on a semiannual basis a summary of the reports it has submitted to FDA and to manufacturers. FDA may, by regulation, alter the frequency and timing of these reports. This provision requiring user facility reporting will become effective upon publication of final regulations or 12 months from the date of enactment, November 28, 1991, whichever is earlier.

Although FDA, since 1976, has had the authority, under section 519 (21 U.S.C. 360i), to require distributors to report adverse effects and deficiencies of devices, the agency, up until this point, had declined to implement this authority. However, the legislative history of the SMDA reflects Congress' belief that FDA must require distributors to make such reports because distributors may be the first to recognize possible device problems. (H. Rept. 808, 101st Cong., 2d sess. 22–23 (1990).) Accordingly, as is clear from its legislative history, the SMDA added section 519(a)(6) to the act to require distributors to report to FDA adverse effects and deficiencies of devices, and to submit copies of these reports to manufacturers. Id. The SMDA also directed FDA to issue a proposal, which FDA is designating a tentative final rule, to implement this requirement within 9 months of enactment and a final rule within 18 months of enactment. (See section 3(c)(1)(A) of the SMDA). If a final rule is not issued within 18 months of enactment, the tentative final rule will become effective as the final rule at that time.

The SMDA also added section 519(d) to the act requiring reporting manufacturers and distributors to certify to FDA the number of reports submitted in a year or the fact that no such reports have been submitted to the agency. This requirement was directly in response to a GAO finding that certification would increase the efficiency of the MDR. (See S. Rept. 513, 101st Cong., 2d sess. 26 (1990).)

B. User Facility Reporting Education and Information Requirements

Under section 2(d) of the SMDA, FDA is directed to provide education and information to persons affected by the user reporting requirements. On April 29 and 30, 1991, FDA held an open conference directed particularly at health care facilities and professionals to educate them on the requirements of the SMDA. FDA also requested those who attended to express their concerns and to offer suggestions on the regulatory requirements FDA should issue under the new law; these concerns and suggestions have been considered carefully in promulgating the tentative final regulation. FDA intends to make publications available in the future to answer questions about compliance with the user facility reporting requirements.

II. Definitions

Existing definitions in 21 CFR part 803 have been revised and new definitions have been added to meet the requirements of the SMDA and the revised MDR reporting requirements.

"Device family" means a group of one or more devices manufactured by the same manufacturer and having the same:

(1) Basic design and performance characteristics related to device safety and effectiveness,

(2) Intended use, and

(3) Where applicable, device classification. Manufacturers must group their devices into device families when submitting reports in accordance with § 803.26.

Devices that function in exactly the same way, have the same electrical and mechanical design and performance characteristics, have the same intended uses, and differ only cosmetically or in minor ways not related to device safety or effectiveness, will usually be considered to be in the same device family. Devices that differ significantly in their electrical or mechanical design and performance characteristics, or have different intended uses, or differ in other ways that are related to device safety and effectiveness, cannot be grouped within the same device family. For example, a series of devices could be assigned to the same device family if they have the same basic design and intended use and differ only in their sizes, as long as the size of the product does not affect, in any way, the safety or effectiveness of the product. If the size

of the device could affect its safety or effectiveness, the device should not be assigned to the same family. FDA has discretion to determine the appropriateness of the manufacturer's determination of the devices that comprise a device family.

"Device user facility" means a hospital, ambulatory surgical facility, nursing home, or outpatient diagnostic or outpatient treatment facility which is not a physician's office. This definition comports with the definition of this term provided in section 519(b)(5) of the act. FDA has exercised its option under this provision of the law to include outpatient diagnostic facilities in the reporting requirements. FDA has included such facilities in order to obtain a more complete view of adverse events. FDA invites comments on whether the terms "physician's office" and "hospital" should be defined and, if so, how they should be defined.

"Distributor" means any person, including persons who import a device into the United States, who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user but who does not repackage or otherwise change the container, wrapper or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling is a manufacturer under § 803.3(k). Because the definition of "distributor" includes importers, importers are included subject to the provisions in the regulations that apply to distributors. The definition of "importer" in current § 803.3(b) has been deleted.

"Incident files" means those files containing documents or other information, including medical files and patient records, in the possession of user facilities related to adverse events that may have been caused by a device. These files must be maintained for adverse events that may have been device-related, regardless of whether the user facility ultimately determines such event is reportable.

"Malfunction" means the failure of a device to meet any of its performance specifications or otherwise to perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the objective intent of the person legally responsible for the labeling of the device. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the device. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It also may be shown by the circumstances that the device is, with the knowledge of such persons or their representatives, offered and used to perform a function for which it is neither labeled nor advertised.

"Manufacturer" means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user or consumer;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications; or

(3) Manufactures components or accessories which are devices that are ready to be used which are intended to be commercially distributed and are intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient.

The definition of manufacturer in the existing regulation, § 803.3(d), defines the term as "any person who is required to register under part 807, other than a person who initially distributes a device imported into the United States." The definition of manufacturer in this tentative final rule is broader and includes all manufacturing establishments regardless of whether they are required to register. FDA believes that, to accomplish adequate protection of the public health, it needs to receive reports of adverse events and deficiencies of devices regardless of whether the manufacturer is required to register. Foreign manufacturers will also now be required to submit MDR reports and to designate an agent in the United States responsible for reporting.

"MDR" means medical device report.

"MDR reportable event" means:

(1) The event for which a person required to report under this part has received or become aware of information that reasonably suggests that there is a probability that a device has caused or contributed to a death, serious illness, or serious injury; or

(2) A malfunction, for which a manufacturer or distributor required to report under this part has received or become aware of information that reasonably suggests that there is a probability that the device, if the malfunction were to recur, would be likely to cause or contribute to a death, serious illness, or serious injury.

An "MDR reportable event" includes a failure of a diagnostic device if information reasonably suggests that there is a probability that a misdiagnosis or lack of diagnosis resulting from the failure: (1) has caused or contributed to a death, serious illness, or serious injury; or (2) would cause or contribute to a death, serious illness or injury if the malfunction were to recur. MDR reportable events also include events that are similar or identical to previously reported events, and include events due to user error or the failure to service or maintain the device. In such cases, the regulation presumes that a malfunction will recur. The regulation also presumes that malfunctions of devices that are surgically implanted or that support or sustain life are reportable events.

"Necessitates immediate medical or surgical intervention" means an event involving a medical device that requires timely medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure, regardless of whether such timely medical or surgical intervention occurred.

"Information that reasonably suggests that there is a probability that a device has caused or contributed to a death or serious injury or serious illness" means information, including professional, scientific, or medical facts, observations, or opinions, which would cause a reasonable person to believe that a device caused or contributed to a death, serious injury, or serious illness. FDA particularly solicits comments on this definition which interprets a phrase contained in the statute in new section 519(b)(1)(A) of the act, added by the SMDA. Comments on improvements in the definition for greater clarity or more distinct boundaries for what gets reported would be welcomed.

"Probability" means, for purposes of this section, that a person would have reason to believe, based upon an analysis of the event and device, that the device has caused or contributed to an adverse event. This term does not signify any particular degree of statistical probability (e.g., 51 percent). This term is interchangeable with "probable" or "probably."

"Serious illness and serious injury" is defined as an illness or injury that: (1) Is life threatening, (2) results in permanent impairment of a body function or permanent damage to the body structure, or (3) necessitates immediate medical or surgical intervention to preclude permanent impairment of a

body function or permanent damage to a body structure.

FDA is deleting the existing definition of "serious injury" in the current § 803.3(h), and is replacing it with a new definition of "serious illness and serious injury" that comports with the definition applicable to user facility reporting provided in section 519(b)(5)(B) of the act. This definition will make the reportable event definitions uniform for manufacturers, distributors, and user facilities. The definition of "serious injury and serious illness" is similar in many respects to the definition of "serious injury" in the current regulation. However, the proposed definition of "serious injury" does not include injuries that necessitate medical or surgical intervention to relieve "unanticipated temporary impairment" of a body function, or "unanticipated damage to body structure." The current definition of "serious injury" will be removed because of the difficulty of interpreting this requirement and to conform with the language regarding reportable injuries and illnesses in the SMDA.

"Working days" means Monday through Friday, excluding Federal holidays.

III. Public Availability of Reports

Section 803.9 has been revised to add sections required by the SMDA. As provided in section 519(b)(2) of the act, FDA will not disclose the identity of a device user facility that makes a report under this regulation except in connection with an action to enforce the reporting requirements or a communication to a manufacturer which is the subject of the device user facility report, or when disclosure is required under § 803.9. FDA may disclose the identity of a device user facility to an employee of the Department of Health and Human Services, to the Department of Justice of duly authorized committees or subcommittees of Congress. Under section 519(b)(1)(D)(3) of the act, no report made by a device user facility, an individual who is employed by, or otherwise affiliated with, a device user facility, or a physician who is not required to submit a report, shall be admissible into evidence or otherwise used in any civil action involving private parties unless the facility, individual or physician had knowledge of the falsity of the information contained in the report.

IV. Reportable Events

Under the current MDR regulation, only domestic manufacturers and importers are required to report device-related deaths and serious injuries and certain malfunctions. Under the tentative final regulation, manufacturers, including foreign manufacturers, distributors (which by definition will include importers) and user facilities are required to report to FDA and/or the manufacturer after they have received or otherwise become aware of information that reasonably suggests that there is a probability that a device has caused or contributed to a death, serious injury, or serious illness. Manufacturers and distributors also will be required to report malfunctions to FDA and the manufacturers, respectively, after they have received or otherwise become aware of information that reasonably suggests that there is a probability that the device would cause, or contribute to, a death, serious illness or injury, if the malfunction were to recur. Although user facilities are not required to report malfunctions that do not result in a death, serious illness, or serious injury, FDA encourages them to voluntarily report such malfunctions to the manufacturer.

V. User Facility Reporting

Under section 519(b)(1) (A) and (B) of the act as added by the SMDA, device user facilities must report either to FDA or the manufacturer device-related deaths, serious injuries, and serious illnesses. The act requires a user facility to report deaths to both FDA and the manufacturer if known, not later than 10 working days after the user facility receives or otherwise becomes aware of information that reasonably suggests that there is a probability that a device has caused or contributed to the death. The act requires a user facility to report serious illnesses or serious injuries to the manufacturer, or to FDA, if the manufacturer is not known, not later than 10 working days after it receives or otherwise becomes aware of information that reasonably suggests that there is a probability that a device has caused or contributed to a serious illness or serious injury.

FDA expects device user facilities to make some effort to discover the identity of the manufacturer of a device involved in a reportable event, if it is not immediately known. If a report is submitted to FDA and not to the manufacturer, FDA will notify the manufacturer.

The tentative final regulation comports with section 519(b)(1)(D) by considering a user facility to have received or otherwise become aware of information with respect to an event when medical personnel who are employed by, or otherwise formally affiliated with, the facility receive or otherwise become aware of the information. In the House Report on the SMDA, the Committee stated: "The term 'formally affiliated' is intended to include physicians with admitting privileges at a hospital. It would not cover an individual, such as a servicing mechanic employed by Xerox Corporation who has no affiliation with the hospital." (H. Rept. 808, 101st Cong., 2nd sess. 20 (1990).) FDA believes that the term "medical personnel" should be interpreted broadly and should include, in addition to physicians and nurses, personnel such as biomedical engineers and risk managers. It would include, for example, a physician providing medical care to a resident of a nursing home under agreement with the nursing home. It would not include a physician providing medical care to such a resident upon the request of the resident only and who did not have any agreement with the nursing home.

Medical personnel are deemed to "become aware" of information that reasonably suggests that a reportable event occurred when they have sufficient information to make a determination that a report is required. User facilities should make reasonable efforts to acquire sufficient information to make this determination as soon as practicable. The user facility then has 10 working days to determine whether there is a probability that the device caused or contributed to a death, serious illness or injury and to file an MDR report. The 10 day time period is the maximum time allowed by the statute.

A patient of a facility is: (1) An individual being diagnosed, treated, or receiving medical care under the auspices of the facility from medical personnel working in, for, or who are otherwise affiliated with a device user facility; or (2) for purposes of this regulation, an employee of the facility or person affiliated with the facility who suffers death, serious illness, or serious injury from a device used at or by the facility. Although FDA acknowledges that other regulatory agencies have authority over employee injuries, FDA believes that it needs to interpret the word "patient" to include employees or persons affiliated with the facility who suffer deaths, serious illnesses, or serious injuries from a device used at or by the facility, in order for FDA to have the information it needs to accomplish its statutory mandate to ensure the safety and effectiveness of devices.

If a facility learns that a reportable event has occurred, but the affected person was not a patient of the facility at the time, FDA encourages the facility to report the event to the manufacturer

voluntarily, if the facility believes the event will otherwise go unreported.

Device user facilities are required to report individual events to FDA and manufacturers on Part I of FDA Form XXX. Information to be included in the report is fully described in § 803.28. The user facility will provide a unique "user facility report number" on each form which will facilitate tracking and auditing by FDA. The number consists of the facility's Health Care Financing Administration (HCFA) 7 or 10 digit number, the calendar year, and a consecutive 4 digit number for each report filed that year by the facility, e.g., xxxxxxx–1991–0001, xxxxxxx–1991–0002. If a facility does not have an HCFA number, the first report should be submitted with all zeros in the HCFA space and FDA will assign a number to be used on future reports. If a facility has more than one HCFA number, the facility may choose any one of those numbers, but must use the same number for all subsequent submissions.

Under section 519(b)(1)(C) of the act, the tentative final regulation requires device user facilities to submit to FDA semiannual summaries of all events reported during the prior reporting period. The tentative final regulation requires, as prescribed by the act, that information in the semiannual summary include the identification of the device user facility, manufacturer, and product, and a brief description of the event. FDA is exercising its discretion, granted by the act, to alter the time for submission of these semiannual summaries, from January 1 and July 1 of each year as specified in the act, to January 31 and July 31 of each year in order to provide device user facilities sufficient time to process reports received at the end of the reporting period. The semiannual report submitted by the device user facilities covering the period of January through June of each year will be due on July 31 of that year. The semiannual report submitted for the period of July through December of each year will be due on January 31 of the following year. The first semiannual report will be due on July 31, 1992, for events occurring from November 28, 1991, to June 30, 1992. Device user facilities that made no reports during a semiannual period are not required to submit a semiannual report for that period.

Pursuant to sections 2 (d) and (f) of the SMDA, FDA will evaluate, not later than 36 months after the date of the enactment of the SMDA, the frequency and timing of these reports and will submit a report containing such evaluations to Congress.

User facility submissions should be made by an individual who is designated by the facility's most responsible person as the device user facility contact for this requirement. FDA will conduct its MDR correspondence with this individual. The contact person may or may not be an employee of the facility. However, the facility and its responsible officials will remain the party ultimately responsible for compliance with the requirements.

VI. Distributor Reporting

The tentative final regulation requires a distributor to submit reports to FDA and copies of such reports to the manufacturer not later than 10 working days after the distributor receives or otherwise becomes aware of information that reasonably suggests there is a probability that a device marketed by the distributor has caused or contributed to a death, serious illness, or serious injury. A distributor is also required to submit reports of malfunctions of devices they distribute to the device manufacturer not later than 10 working days after the distributor receives or otherwise becomes aware of information that reasonably suggests there is a probability that the device would cause or contribute to a death, serious illness, or serious injury, if the malfunction were to recur.

The requirement to report any death, serious illness, serious injury, or a malfunction that may cause such events, arises when the distributor, or an employee thereof, receives the information, whether or not the information has been confirmed. Distributors will be required to provide the information described in § 804.28 for each separate report of an MDR reportable event. Distributors are not required to investigate the cause of adverse device events. This responsibility will rest with the manufacturer. Distributors are only required to review the information that is submitted to them and to determine whether or not a reportable event has occurred.

In order to implement the reporting requirements for distributors in an efficient manner, FDA needs to require distributors to register with FDA under section 510 of the act (21 U.S.C. 360). Section 510 of the act requires that every person who owns or operates an establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device shall be required to register. Distributors are within the purview of this section because they propagate devices. Accordingly, 21 CFR part 807 is being amended to require distributors to register with FDA

VIII. Reporting by Manufacturers

Similar to the existing MDR regulation, the tentative final regulation requires manufacturers to submit reports to FDA whenever they receive or otherwise become aware of information that reasonably suggests there is a probability that a device marketed by the manufacturer caused or contributed to a death, serious illness or injury. Manufacturers are also required to report malfunctions if the information reasonably suggests there is a probability, if the malfunction were to recur, that the device would cause or contribute to a death, serious illness, or injury. No monthly report is required if no reportable events are received during a month. Under the tentative final rule, foreign manufacturers now will be subject to the same reporting requirements as domestic manufacturers, and must designate an agent in the United States responsible for reporting. FDA believes that the inclusion of foreign manufacturers will provide information that is needed to ensure the safety of medical devices.

The requirement to report any death, serious illness, or serious injury or a malfunction that may cause such events, arises when the manufacturer, or an employee thereof, receives the information, whether or not the information has been confirmed.

Under the current regulation, manufacturers must report deaths and serious injuries that may have been caused by a device within 5 days, and must report malfunctions that might cause death or serious injury, if the malfunction were to recur, in 15 days. In 1990, an internal FDA task force analyzed compliance under the current regulation, and noted that the reports that FDA received from manufacturers frequently did not contain the information necessary to evaluate the event. The task force concluded that this problem, in part, may be caused by the short timeframes prescribed by the current regulation to report events to FDA. In an attempt to allow manufacturers ample time to thoroughly evaluate each event and to provide meaningful information to FDA, the tentative final regulation extends the time period for manufacturers to a monthly reporting schedule described in § 803.26(b). Because of the tentative final regulation's new reporting requirements for distributors and user facilities, FDA does not believe that the extended timeframes allowed for

manufacturer reporting will compromise the ability of FDA to react promptly to devices that pose a risk to the public health. Under the tentative final regulation, distributors will be required to report directly to FDA deaths, serious illnesses, and serious injuries, within 10 days, and user facilities will be required to report deaths directly to FDA within 10 days. The tentative final regulation also requires that manufacturers notify FDA within 72 hours of device failures that pose an imminent hazard to the public health. FDA believes that these combined reporting requirements for manufacturers, distributors, and user facilities will work together to notify FDA promptly of serious health hazards and obviate the need for the shorter timeframes for manufacturer reporting under the current regulation.

The manufacturer's monthly reports will include three forms as described in § 803.26. The first form is the individual event report form submitted to the manufacturer by distributors and user facilities. The manufacturer will fill out the appropriate part of the individual event report form. The second form will provide summaries of the individual reports, as well as the manufacturer's analysis of trends of the number or severity of device malfunctions. The manufacturer will be allowed to explain the cause of any upward trends, e.g., increased number of marketed devices in the report. The third form will provide baseline information, including the number of devices manufactured, distributed and in use during the previous 12-month period, any remedial action taken that was not reported to FDA, and information on the frequency and severity of adverse events during the last 12 months. The baseline information will be updated by January 1 of each subsequent year if any information has changed. FDA invites comments on its requirements for monthly summaries from manufacturers.

FDA has experienced difficulty in analyzing reports submitted under the existing regulation. Many reports, for example, have not clearly and unambiguously identified the device. Moreover, FDA has not been able to make an effective determination of the significance of many device failures, because the reports did not include the total number of similar devices in current use, or the total number of devices that had similar failures. Together, the individual reports, monthly summary reports, and baseline reports will provide FDA with information necessary to identify and evaluate the event, and to quickly assess the risk of device failures.

VIII. Annual Certification Requirements for Manufacturers and Distributors

Under section 519(d) of the act, each manufacturer and distributor will be required to submit to FDA an annual statement certifying either: (1) That reports were submitted during the previous calendar year, the number of reports submitted, and that all reportable events were submitted; or (2) that the firm did not receive information on any reportable events. The certification must be signed by a responsible person designated by the firm.

This requirement for a certified statement will be incorporated into the annual registration Form FDA–2891(a) which FDA's Device Registration and Listing Branch presently sends to all active device establishments once a year for the purpose of renewing their device registrations. Under the existing regulation, establishments have until December 31 of each year to update their annual registration. This is accomplished by returning to FDA the completed Form FDA–2891(a). Routinely, for the last several years, the annual registration mailings have been sent out in three batches and, even though the forms do not have to be returned until December 31 of each year, most firms voluntarily have returned the completed forms within a month of the FDA mailing. In this way, FDA makes better use of its limited resources by spreading out the processing of registration and listing information over several months.

Because of the SMDA, more establishments will be added to the inventory. Therefore, it is imperative that the agency formalize its present use of staggered mailings, so the information received can be processed in a timely manner. FDA is therefore proposing to stagger the annual registration in four phases throughout the year.

Certification of the number of MDR reports will be handled by the official correspondent designated under § 807.3(e) of the registration and listing regulations and, for foreign firms, by the U.S. designated agent for foreign firms. The individual who certifies the number of MDR reports must be the same individual who submits other reports required under part 803. If there are multiple registered sites under the ownership and control of one owner/operator, only one certification form should be returned to FDA. Each foreign firm will inform FDA by letter of their U.S. designated agent. Certification forms will be mailed by FDA to these agents in accordance with the schedule for mailing annual registration forms.

IX. Written MDR Procedures

Each device manufacturer, distributor, and device user facility will be required to maintain and establish written MDR procedures that will enable the reporting establishment to identify, evaluate, document, and communicate reportable events. These procedures will include: (1) Training and education programs to inform employees of the obligations under the MDR regulations and to instruct employees how to identify and report reportable events; (2) internal systems that provide guidance to identify, evaluate, and communicate MDR reportable events; and (3) documentation and recordkeeping guidelines.

X. Files

Distributors and user facilities will be required to keep records concerning MDR reportable events under this regulation. Manufacturers and importers are already required to maintain complaint files under the existing MDR regulation and 21 CFR 820.198 of the current good manufacturing practice for medical devices regulation. A new requirement applicable to manufacturers, user facilities, and distributors (including importers) has been added, namely that records required to be kept by part 803 must be clearly identified as such. This will greatly facilitate auditing of these records by FDA investigators. User facilities will be required to maintain device incident files which must contain records of any event which was investigated by the facility to determine whether or not it must be reported.

Manufacturers and distributors must keep these records for 2 years or for the expected life of the device, whichever is greater. User facilities must keep the records for 2 years. Manufacturers, distributors and user facilities must permit FDA employees at all reasonable times to have access to and to copy and verify the records. Manufacturers must evaluate reports in accordance with §§ 820.162 and 820.198 of the current good manufacturing practice for medical devices regulation and include documentation of the evaluations in the complaint files.

XI. Enforcement

Section 701(a) of the act authorizes FDA to promulgate substantive binding regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973); *National Ass'n of Pharmaceuticals Manufacturers* v. *FDA*.

637 F. 2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F. 2d 690 (D.C. Cir. 1978); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F. 2d 688 (2d Cir.), cert. denied, 423 U.S. 827 (1975).

Section 301 of the act (21 U.S.C. 331) sets forth prohibited acts. Persons who violate section 301 of the act may be restrained, under section 302 of the act (21 U.S.C. 332), or may be imprisoned or fined under section 303 of the act, (21 U.S.C. 333).

Violations of any final rule based on this tentative final regulation, which is issued under the authority of sections 502, 510, 519, 520, 702, and 704 of the act (21 U.S.C. 352, 360, 360i, 360j, 371, and 374), will result in committing one or more of the following violations of section 301 of the act:

1. Section 301(e) of the act, which prohibits the refusal to permit officers or employees designated by FDA to have access to records relating to interstate commerce, or the failure to establish or maintain records, or to make reports required under section 519 of the act;

2. Section 301(f) of the act, which prohibits the refusal to permit, for purposes of enforcement of the act, entry or inspection by officers or employees designated by FDA, to conduct inspections of establishments that are required to maintain records under section 519 of the act, and to permit such employees to have access to, and to copy and verify such records;

3. Section 301(q) of the act, which prohibits the failure or refusal to furnish any material or information required by section 519 of the act.

In addition, section 502(t)(2) of the act (21 U.S.C. 352(t)(2)) deems a device to be misbranded if there is a failure to furnish any material or information required by section 519 of the act respecting a device. Sections 301(a), (b), (c), (g), and (k) of the act prohibit several actions with respect to interstate commerce in misbranded devices. FDA may also seize misbranded devices under section 304 of the act (21 U.S.C. 334) as well as restrain or prosecute violations of section 301 of the act relating to misbranded devices.

In addition to the criminal and civil enforcement mechanisms described above, the SMDA added section 303(f) (21 U.S.C. 333(f)) to the act, which provides for the first time that manufacturers, importers and distributors may be subject to civil penalties for violations of sections 519(a) or 520(f) of the act that constitute a significant or knowing departure from these requirements, or a risk to the public health. Penalties may not exceed $15,000 for a single violation, and may not exceed $1,000,000 for all such violations adjudicated in a single proceeding.

User facilities are not automatically subject to the civil penalty provisions. In section 17(b)(1) of the SMDA, Congress directed FDA to conduct a study to determine whether there has been substantial compliance with the requirements of section 519(b) of the act by device user facilities. FDA must submit the results of this study to Congress after the expiration of 45 months from the date of enactment. If, upon the expiration of 48 months after the date of enactment, FDA has not made the required report, the civil penalties provisions will take effect for device user facilities. If FDA makes the required report and determines that there has been substantial compliance with the requirements of section 519(b) of the act by a type of device user facility, the civil penalty provisions will not take effect with respect to that type of device user facility. If FDA makes the required report and determines that there is not substantial compliance with the requirements of section 519(b) of the act by a type of device user facility, the civil penalty provisions will take effect upon the effective date of the report. If FDA makes a determination that there is no such substantial compliance after making the required report, the civil penalties provisions will take effect upon the effective date of FDA's subsequent determination. Until one of these events occurs, the civil penalty provisions will not apply to device user facilities.

XII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XIII. Economic Impact

FDA has carefully examined the economic impact of the proposed rule in accordance with the economic requirements of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. A one-time cost of $47.5 million will be incurred for data collection and reporting. In addition, the annual cost of user reporting is estimated to be $22 million. A copy of the document supporting this determination is on file at the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

XIV. Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Reporting and Recordkeeping Requirements for User Facilities, Distributors, and Manufacturers of Medical Devices Under Public Law 101-629—General Requirements.

Description: FDA is proposing to implement provisions of the SMDA regarding user facility and distributor reporting to FDA of deaths and serious injuries and illnesses related to medical devices. FDA is also proposing to amend its regulations that require manufacturers to report deaths, serious injuries, and malfunctions related to medical devices to FDA. The purpose of these proposed changes is to improve the protection of the public health while also reducing the regulatory burden on user facilities, distributors, and manufacturers of medical devices. The existing information collections have been approved under OMB No. 0901-0201.

Description of Respondents: Businesses or other for profit organizations.

ESTIMATED ANNUAL BURDEN FOR REPORTING

CFR Section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
803.24(a)	36,639	.09	3,360	4	13,439
803.24(b)	36,639	1	36,639	4	146,556
803.24(c)	36,639	2	73,278	2	146,556
803.25(a)	2,500	1	2,500	1	2,500
803.26(a)	750	53	40,000	1	40,000
803.26(c)	750	12	9,000	1	9,000
803.26(d)	750	3	2,250	1	2,250
803.26(e)	750	.01	10	4	40
803.26(f)	750	.01	10	4	40
803.26(g)	3,900	.26	1,000	1	1,000
803.30	13,953	1	13,953	1	13,953
803.33(a)	75	1	75	1	75
803.34(a)	39,900	1	39,900	40	159,556
803.34(b)(c)	39,900	1	39,900	40	159,556
Total					694,521

ANNUAL BURDEN FOR RECORDKEEPING

CFR section	No. of record-keepers	Annual hours per recordkeep-ing	Total annual burden hours
803.35(a)	2,500	4	10,000
803.35(b)	624	16	9,984
803.35(c)	36,639	0.25	9,160
Total			29,144

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Federal Regulation of Medical Devices—Problems Still To Be Overcome," GSA/HRD–83–53, September 30, 1983.

2. "MEDICAL DEVICES—Early Warning of Problems Is Hampered by Severe Underreporting," GAO/PEMD–87–1, December 1986.

3. "MEDICAL DEVICES—FDA's Forecasts of Problem Reports and FTE's Under H.R. 4640," GAO/PEMD–88–30, July 1988.

4. "MEDICAL DEVICES—FDA's Implementation of the Medical Device Reporting Regulation," GAO/PEMD–89–10, February 1989.

5. "MEDICAL DEVICE RECALLS—An Overview and Analysis 1983–88," GAO–PEMD–89–15BR, August 1989.

6. "MEDICAL DEVICE RECALLS—Examination of Selected Cases," GAO–PEMD–90–6, October 1989.

7. "MEDICAL DEVICES—Underreporting of Serious Problems With a Home Apnea Monitor," GAO/PEMD–90–17, May 1990.

XI. Request for Comments

Interested persons may, on or before January 27, 1991, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirement.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 803 and 807 be amended as follows:

1. Part 803 is revised to read as follows:

PART 803—MEDICAL DEVICE REPORTING

Subpart A—General Provisions

Sec.

803.1 Scope.
803.3 Definitons.
803.9 Public availability of reports.

Subpart B—Reports and Records

803.24 Reports by device user facilities.
803.25 Reports by distributors.
803.26 Reports by manufacturers.
803.27 Where to submit a report.
803.28 Reporting form.
803.30 Annual certification.
803.31 Additional requirements.
803.32 Supplemental information.
803.33 Alternative reporting requirements.
803.34 Written MDR procedures.
803.35 Files.
803.36 Exemptions from reporting.

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

Subpart A—General Provisions

§ 803.1 Scope.

(a) FDA is requiring medical device manufacturers, distributors, and device user facilities to report deaths, serious illnesses, and serious injuries that are attributed to medical devices. Manufacturers and distributors are also required to report certain device malfunctions and to submit a report to FDA annually certifying the number of medical device reports filed during the preceding year, or that no reports were filed. These reports enable FDA to protect the public health by helping to ensure that devices are not adulterated or misbranded and are otherwise safe and effective for their intended use. In addition, device manufacturers, distributors, and device user facilities are required to establish and maintain complaint files or incident files as

described in § 803.35, and to permit any authorized FDA employee at all reasonable times to have access to, and to copy and verify, the records contained in this file. This part supplements, and does not supersede, other provisions of this subchapter, including the provisions of part 820 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 803.3 Definitions.

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Device family* means a group of one or more devices manufactured by the same manufacturer and having the same:

(1) Basic design and performance characteristics related to the device's safety and effectiveness;

(2) Intended use; and

(3) Device classification, where applicable. Manufacturers must group their devices into device families when submitting reports in accordance with § 803.26.

(c) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, or an outpatient diagnostic or outpatient treatment facility which is not a physician's office.

(d) *Distributor* means any person, including any person who imports a device into the United States, who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container wrapper, or labeling, is a manufacturer under § 803.3(j).

(e) *Distributor Report Number* means the number that uniquely identifies each report submitted by a distributor. Distributors who receive reports shall use their seven digit FDA registration number, calendar year that the report is received, and a sequence number. For example, the complete number will appear as follows: 1234567-1991-0001. Distributor report numbers shall also be required on Part II of Form XXX.

(f) *FDA* means the Food and Drug Administration.

(g) *Imminent hazard* means any unanticipated fatal or acutely life threatening event that has been caused by or has resulted from the use of a device and that would cause a responsible person to take immediate corrective action to prevent recurrence.

(h) *Incident files* are those files containing documents or other information, including medical files and patient records, in the possession of user facilities, which are related to adverse events that may have been caused by a device.

(i) *Information that reasonably suggests that there is a probability that a device has caused or contributed to a death or serious injury or serious illness* means information, including professional, scientific, or medical facts, observations, or opinions, which would cause a reasonable person to believe that a device caused or contributed to a death, serious injury, or serious illness.

(j) *Malfunction* means the failure of a device to meet any of its performance specifications or otherwise to perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the objective intent of the person legally responsible for the labeling of the device. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the device. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It also may be shown by the circumstances that the device is, with the knowledge of such persons or their representatives, offered and used to perform a function for which it is neither labeled nor advertised.

(k) *Manufacturer* means any person, who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture, to the person who makes final delivery or sale to the ultimate user or consumer;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications; or

(3) Manufactures components or accessories which are devices that are ready to be used and are intended to be commercially distributed and are intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient.

(l) *MDR* means medical device report.

(m) *MDR reportable event* means:

(1) The event for which a person required to report under this part has received or become aware of information that reasonably suggests that there is a probability that a device has caused or contributed to a death, serious illness, or serious injury; or

(2) A malfunction, for which a manufacturer or distributor required to report under this part has received or become aware of information that reasonably suggests that there is a probability that the device, if the malfunction where to recur, would be likely to cause or contribute to a death, serious illness, or serious injury.

(n) *Manufacturer Report Number* means the number that uniquely identifies each report submitted by a manufacturer. Manufacturers who receive reports from sources other than user facilities or distributors shall use their seven digit FDA registration number, calendar year that the report is received, and a sequence number. For example, the complete number will appear as follows: 1234567–1991–0001.

(o) *Necessitates immediate medical or surgical intervention* means an event involving a medical device that requires timely medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure, regardless of whether such timely medical or surgical intervention occurred.

(p) *Patient of the facility* means any individual being diagnosed or treated and/or receiving medical care under the auspices of, the facility from medical personnel who are working in, for, or are otherwise affiliated with a device user facility. For the purpose of this part, an employee of the facility, or an individual affiliated with the facility, who suffers death, serious illness, or serious injury from a device used at or by the facility is regarded as a patient of the facility.

(q) *Permanent* means nonreversible impairment or damage.

(r) *Probability, probable,* or *probably* means, for purposes of this section, that a person would have reason to believe, based upon an analysis of the event and device, that the device has caused or contributed to an adverse event. This term does not signify statistical probability.

(s) A *remedial action* is any recall, repair, modification, adjustment, relabeling, destruction, inspection, patient monitoring, notification, or any other action relating to a device that is initiated by a manufacturer or distributor, in response to information that it receives or otherwise becomes aware of, that reasonably suggests that one of its marketed devices has caused or contributed to an MDR reportable event.

(t) *Serious illness or serious injury* means an event that:

(1) Is life threatening;

(2) Results in permanent impairment of a body function or permanent damage to the body structure; or

(3) Necessitates immediate medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(u) *User Facility Report Number* means a number that consists of three parts that uniquely identifies each report submitted by a user facility. The first part of the number sequence consists of the 7 or 10 digit Health Care Financing Administration (HCFA) provider number. The second part of the number sequence is the four digit calendar year in which the reports are submitted. The third part of the number sequence is a four digit number assigned by the facility to distinguish each separate MDR report, e.g., 0001, 0002, etc. For example, a complete number will appear as follows: 1234567891–1991–0001. If a device user facility has more than one HCFA provider number, it may use any one of them, but must use the same number for all reports. If a device user facility does not have an HCFA provider number, it should use all zeroes in this place in its first place and FDA will assign the user facility a number for future use.

(v) *Working day* means Monday through Friday excluding Federal holidays.

(w) Any term defined in section 201 of the act shall have the same definition unless otherwise defined in this part.

§ 803.9 Public availability of reports.

(a) Any report, including any FDA record of a telephone report, submitted under this part is available for public disclosure in accordance with Part 20 of this chapter.

(b) Before public disclosure of a report, FDA will delete from the report:

(1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61 of this chapter; and

(2) Any personnel, medical, and similar information, including the serial numbers of implanted devices, which would constitute a clearly unwarranted invasion of personal privacy under § 20.63 of this chapter; provided, that, except for the information under § 20.61 of this chapter, FDA will disclose to a patient who requests a report all the information in the report concerning that patient.

(c) FDA may not disclose the identity of a device user facility which makes a report under this part except in connection with:

(1) An action brought to enforce the failure or refusal to furnish material or information required by section 519 of the act;

(2) A communication to a manufacturer of a device which is the subject of a report of an adverse event which is required by a user facility under § 803.24; or

(3) A disclosure relating to a manufacturer or distributor report which is required under section 519(a) of the act. This paragraph does not prohibit FDA from disclosing the identity of a device user facility making a report under this part or any information in such a report to employees of the Department of Health and Human Services, to the Department of Justice, or to the duly authorized committees and subcommittees of the Congress.

Subpart B—Reports and Records

§ 803.24 Reports by device user facilities.

A device user facility shall submit the following reports to the manufacturer or to FDA, or both, as specified below:

(a) *Reports of death.* Whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that there is a probability that a device has caused or contributed to the death of a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information required by § 803.28 to FDA on Form XXX, and, if the identity of the manufacturer is known, to the manufacturer of the device.

(b) *Reports of serious illness or serious injury.* Whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that there is a probability that a device has caused or contributed to a serious illness or serious injury, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information listed in § 803.28 to the manufacturer of the device, or to FDA if the identity of the manufacturer is not known.

(c) *Semiannual reports.* Each device user facility shall submit to FDA, on a semiannual basis, a summary of the reports made under paragraphs (a) and (b) of this section. Each summary shall be submitted on January 31 (for reports made July through December) and on July 31 (for reports made January through June) of each year. The first semiannual report is required on July 31, 1992. The summary shall be submitted on FDA Form 222 and shall consist of information that includes:

(1) The user facility identification number;

(2) The reporting year and period, e.g., January through June, or July through December;

(3) The facility's name and complete address;

(4) The total number of reports attached or summarized;

(5) The lowest and highest semiannual user facility report number of MDR reportable events for the semiannual reporting period;

(6) The name and complete address of the individual designated as the facility contact responsible for reporting adverse events to FDA, and a statement of whether this facility contact has changed since the submission of the last semiannual report; and

(7) The information for each MDR reportable event that occurred during the semiannual reporting period including:

(i) The MDR report number.

(ii) The name of the device's manufacturer.

(iii) The device's brand name and common name.

(iv) The product model, catalog, serial and lot number.

(v) A brief description of the event reported to the manufacturer.

(d) In lieu of submitting the information in paragraph (c)(7) of this section, a device user facility may submit a copy of FDA Form XXX, Part I, for all MDR reportable events submitted by that facility during the reporting period.

(e) For purposes of this part, a device user facility shall be treated as having received or otherwise having become aware of information with respect to a device of that facility when medical personnel, in the course of their duties, who are employed by, or are otherwise formally affiliated with the facility, receive information or become aware of information that reasonably suggests that there is a probability the device has caused or contributed to a death, serious illness, or serious injury. For purposes of this part, "formally affiliated" medical personnel includes physicians or licensed health care professionals with admitting privileges at the device user facility. Medical personnel are deemed to become aware of a reportable device problem when they have sufficient information to make a determination that a report is required.

§ 803.25 Reports by distributors.

(a) A distributor shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 803.28 on Part I of Form XXX as soon as practicable, but not later than 10 working days after the distributor receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that there is a probability that a device marketed by the distributor has caused or contributed to a death, serious illness, or serious injury.

(b) A distributor shall submit to the manufacturer a report containing information required by § 803.28 on Part I of Form XXX, as soon as practicable, but not later than 10 working days after the distributor receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the distributor's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the distributor has malfunctioned and such information reasonably suggests that there is a probability that the device or any other device marketed by the distributor would cause a death, serious illness, or serious injury, if the malfunction were to recur.

§ 803.26 Reports by manufacturers.

(a) A manufacturer shall submit to FDA a report containing the information listed in § 803.28 on Part II of Form XXX whenever the manufacturer:

(1) Receives or otherwise becomes aware of information that reasonably suggests that there is a probability that a device marketed by the manufacturer has caused or contributed to a death, serious illness, or serious injury;

(2) Receives or otherwise becomes aware of information that one of the devices marketed by the manufacturer has malfunctioned and such information reasonably suggests that there is a probability that the device or any other device marketed by the manufacturer would cause a death, serious illness, or serious injury, if the malfunction were to recur; and

(3) Receives or otherwise becomes aware of information:

(i) In the medical or scientific literature, whether published or unpublished, that reasonably suggests that there is a probability that one of its marketed devices:

(A) Has caused or contributed to a death, serious illness, or serious injury; or

(B) Has malfunctioned and that the device or any other device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur; or

(ii) Receives or otherwise becomes aware of information, through its own research, testing, evaluation, servicing, or maintenance of one of its devices, that reasonably suggests a probability that one of its marketed devices malfunctions and that the device or any other device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(b) Reporting schedule. Each manufacturer shall follow this schedule in submitting to FDA the reports required by paragraph (a) of this section:

For information received by manufacturer during:	Reports are due to FDA by:
January	March 1.
February	April 1.
March	May 1.
April	June 1.
May	July 1.
June	August 1.
July	September 1.
August	October 1.
September	November 1.
October	December 1.
November	January 1.
December	February 1.

(c) Each monthly report shall be on FDA Form YYY and shall include the information requested thereon, including:

(1) The name of the manufacturer;

(2) The FDA registration number of the reporting facility and, if different, the manufacturing site(s);

(3) The reporting period (the month in which reports were received);

(4) The date of the report;

(5) A list of all manufacturer report numbers for each of the MDR reportable events, the lowest and the highest manufacturer report numbers, the total number of reports, and a copy of Form XXX completed by the manufacturer for each MDR reportable event received during the reporting period; and

(6) A narrative evaluation of the reports received during the reporting period including, but not necessarily limited to, the following information:

(i) for each device family, a statement comparing the events in the current report with those reported to the firm during the last 12 months;

(ii) The identification (manufacturer report number) of any events in the current report that differ in their frequency or severity from events previously reported;

(iii) Whether the number and/or severity of reported events in the last 12 months for each combination of device family and type of event shows a statistically significant upward trend or a downward trend in the number and/or severity of reported events, and an explanation of any upward trend noted;

(iv) for each combination of device family and type of event, a statement as to whether the frequency and/or severity of occurrences of reported events for the current month, as compared with previous months, shows a statistically significant upward shift, or no shift, and the statistical analyses used to make that determination;

(v) If any unusual events were reported or any trends or shifts observed, a description of any analyses made of the events and any trends or shifts including relevant MDR report numbers, any failure analyses or other analyses of the cause of events, any remedial actions implemented or planned to correct or deal with the problems, and, if no such actions were implemented or planned, an explanation of why not; and

(vi) A description of any remedial actions, identified by MDR report numbers, implemented as a direct or indirect result of any MDR reportable events received during the reporting period that is not covered by paragraph (c)(6)(v) of this section or that has not been reported to FDA under section 518(e) (the recall provision) of the act or section 519(f) (the reports of removals and correction provisions) of the act.

(d) Baseline reports. Each manufacturer shall submit on FDA Form WWW the information requested thereon for each device that is the subject of a report under paragraph (c) of this section at the time the monthly report is submitted. This information shall include:

(1) The manufacturer's name and complete address;

(2) The name and complete address of the individual that has been designated by the manufacturer as the person responsible for reporting adverse events, the signature of the responsible individual, and the date of the report;

(3) The total number of baseline reports submitted;

(4) The product identification, including brand name, manufacturer name, generic name, device family, model number, catalog number, and the basis for marketing, including a reference, if applicable, to FDA premarket approval or premarket notification numbers;

(5) The date the device was initially marketed and, if applicable, the date the device ceased being marketed;

(6) The shelf life, expected life, and warranty period;

(7) The number of devices manufactured and distributed for the previous 12 months, and an estimate of the number of devices presently on the market;

(8) A listing of any remedial actions related to the device during the last 12 months that have not been submitted to FDA, and corresponding codes or numbers that the manufacturer has used to identify these actions;

(9) The FDA registration numbers for the manufacturing sites; and

(10) A table showing, for each type of MDR reportable event, the number of occurrences of the event each month for the last 12 months, and a statement as to whether the frequency or severity of adverse events has increased, decreased, or remains constant, and a description of the statistical criteria or evaluation methodology used to arrive at the determination. Each report shall include the name, title, address, telephone number, and signature of the person making the report. The information in the baseline report is required when a device is the subject of a monthly report for the first time and shall be updated by January 1 of each subsequent year if any information has changed.

(e) Reports of imminent hazard. A manufacturer shall notify FDA by telephone, facsimile (fax), or overnight mail within 72 hours after becoming aware of information that reasonably suggests that there is a probability that a device manufactured by the firm presents an imminent hazard to the public health. This report shall be identified as a "REPORT OF IMMINENT HAZARD" and shall contain all available information listed in § 803.28. A complete report of this event shall be included in the firm's monthly report.

(f) Supplemental information. When a manufacturer obtains information required under this section that was not submitted because it was not known or was not available at the time the report under those sections was submitted, the manufacturer shall submit the information to FDA using FDA Form XXX and Form YYY as appropriate. The supplemental report shall:

(1) Indicate that it is a supplemental report;

(2) Provide the appropriate MDR report number(s), and/or monthly report number; and

(3) Include only the new or changed information in the appropriate portion(s) of the form;

(g) Medical device reporting requirements for foreign manufacturers. (1) Any foreign manufacturer whose devices are imported or offered for import into the United States, whether or not the establishment is also registered, shall comply with the medical device reporting requirements of this part unless exempt under § 803.36.

(2) The reports required under this part shall be in the English language.

(3) Every foreign manufacturer required to report under this part shall designate an agent in the United States responsible for reporting. The foreign manufacturer shall submit the name and address of this agent with the first report submitted under this part and shall update it in subsequent reports as necessary.

§ 803.27 Where to submit a report.

(a) Any telephone report required under this part shall be provided to 301–427–7500.

(b) Any facsimile report required under this part shall be provided to 301–881–6670.

(c) Any written report or additional information required under this part shall be submitted to:

For device user facilities: Food and Drug Administration, Center for Devices and Radiological Health, FDA User Reporting, P.O. Box 3002, Rockville, MD 20847–3002.

For manufacturers and distributors: Product Monitoring Branch (HFZ–351), Center for Devices and Radiological Health, Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850.

§ 803.28 Reporting form.

(a) Each user facility, manufacturer, or distributor that submits a report on an MDR reportable event shall provide the information requested on part I or part II of FDA Form XXX as specified below:

(1) User facilities shall complete the applicable portions of part I of the form with such information as is known or reasonably should be known to the facility and submit them to FDA and/or the manufacturer as required by § 803.24.

(2) Manufacturers shall complete and submit Part II of the form to FDA. The manufacturer shall also complete and submit Part I of the form if the manufacturer received the information concerning the reportable event from a source other than a user facility or distributor.

(3) Distributors shall complete and submit the applicable portions of Part I of the form in so far as the information is known or should be known to the distributor to FDA and to the manufacturer as required by § 803.25.

(b) Each user facility, manufacturer, or distributor shall submit the information requested on FDA Form XXX, including:

(1) User Facility Information (information included in Part I of FDA Form XXX):

(i) Facility identification. (A) The user facility report number;

(B) The name, address, and telephone number of the reporting facility and the MDR contact in the first report submitted (subsequent reports may provide an identifying number or code); and

(C) The name of the manufacturer who received the report of the event;

(ii) Date information. (A) The date of the occurrence of event;

(B) The date the facility became aware of the event;

(C) The date the event was reported to the manufacturer and/or FDA; and

(D) The date of this report.

(iii) The type of MDR reportable event and whether an imminent hazard was involved;

(iv) Patient information including age, sex, diagnosis, and medical status immediately prior to the event and after the event;

(v) Device information including brand and labeled name, generic name, model number or catalog number or other identifying numbers, serial number or lot number, purchase date, expected shelf life/expiration date (if applicable), whether the device was labeled for single use, and date of implant (if applicable);

(vi) Maintenance/service information data including last date of service performed on the device, where service was performed, whether service documentation is available, and whether service was in accordance with the service schedule; and

(vii) Whether the device is available for evaluation and, if not, the disposition of the device.

(viii) Description of event. (A) Who was operating or using the device when the event occurred;

(B) Whether the device was being used as labeled or as otherwise intended;

(C) The location of the event;

(D) Whether there was multi-patient involvement, and if so, how many patients were involved;

(E) A list of any other devices whose performance may have contributed to the event and their manufacturers, and the results of any analysis or evaluation with respect to such device (or a statement of why no analysis or evaluation was performed); and

(F) A complete description of the event including, but not limited to, what

happened, how the device was involved, the nature of the problem, patient followup/treatment required, and any environmental conditions that may have influenced the event.

(ix) The results of any analysis of the device and the event, including:

(A) The method of evaluation or an explanation of why no evaluation was necessary or possible;

(B) The results and conclusions of the evaluation;

(C) The corrective actions taken; and

(D) The degree of certainty concerning whether the device caused or contributed to the reported event; and

(x) The name, title, address, telephone number, and signature of the person who prepared the report.

(2) Distributor Information (information included in Part I of FDA Form XXX):

(i) Identification of the source of report. (A) Type of source that reported the event to distributor (e.g., lay user owner; lay user lessee, hospital, nursing home, outpatient diagnostic facility, outpatient treatment facility, ambulatory surgical facility);

(B) Distributor report number;

(C) Name, address, and telephone number of the reporting distributor and the source that reported the event to the distributor; and

(D) Name of the manufacturer of the device.

(ii) Date information. (A) The date of the occurrence of the event;

(B) The date the source that reported the event to the distributor became aware of the event;

(C) The date the event was reported to the manufacturer and/or FDA; and

(D) The date of this report.

(iii) The type of MDR reportable event, e.g., death, serious illness, serious injury, or malfunction, and whether an imminent hazard was involved;

(iv) Patient information including age, sex, diagnosis, and medical status immediately prior to the event and after the event;

(v) Device information including brand and labeled name, generic name, model number or catalog number or other identifying numbers, serial number or lot number, purchase date, expected shelf life/expiration date (if applicable), whether the device was labeled for single use, and date of implant (if applicable);

(vi) Maintenance/service information data including the last date of service performed on the device, where service was performed, whether service documentation is available, and whether service was in accordance with the service schedule;

(vii) Whether the device is available for evaluation and, if not, the disposition of the device;

(viii) Description of the event. (A) Who was operating or using the device when the event occurred;

(B) Whether the device was being used as labeled or as otherwise intended;

(C) The location of the event;

(D) Whether there was multi-patient involvement, and if so, how many patients were involved;

(E) A list of any other devices whose performance may have contributed to the event and their manufacturers, and the results of any analysis or evaluation with respect to such device (or a statement of why no analysis or evaluation was performed); and

(F) A complete description of the event including, but not limited to, what happened, how the device was involved, the nature of the problem, patient followup/treatment required, and any environmental conditions that may have influenced the event.

(ix) The results of any analysis of the device and the event, including:

(A) The method of evaluation or an explanation of why no evaluation was necessary or possible;

(B) The results and conclusions of the evaluation;

(C) The corrective actions taken; and

(D) The degree of certainty concerning whether the device caused or contributed to the reported event;

(x) The name, title, address, telephone number, and signature of the person who prepared the report.

(3) Manufacturer information (information included in Part II of FDA Form XXX):

(i) Identification information including the manufacturer's name and the FDA registration number assigned to the manufacturing site for the device;

(ii) The date that the manufacturer became aware of the event, the date the event was reported to the manufacturer, and the date of the report to FDA;

(iii) Information concerning the device if it differs from the information received from the reporter, including the brand name, generic name, device family, model number, catalog number, other product identification number, serial number, lot number and expiration date, if applicable;

(iv) Manufacturer assessment of event including:

(A) The type of MDR reportable event, e.g., death, serious illness, serious injury, or malfunction, if different from that stated by the reporter, and device event codes;

(B) Analyses of the device and event (e.g., whether the device was evaluated and if not, why not, the method of evaluation, and the evaluation results and conclusions); and

(C) Steps taken to verify information received from the reporter with persons who have direct knowledge of the event and, in the event such verification does not take place, an explanation why such information was not obtained, and a statement of when the information will be submitted, if the information can be obtained.

(v) Remedial action taken, if any, including the nature of the action, an explanation of why no action was necessary, and any FDA number assigned to any official recall, safety alert, etc., if applicable;

(vi) The degree of certainty that the device caused or contributed to the reported event or an explanation of why a cause and effect determination cannot be made;

(vii) An explanation of why any required information in the report was not submitted and a statement of when the information will be submitted, if the information can be obtained; and

(viii) The name, title, address, telephone number, and signature of the person who prepared and submitted the report including the date of the report.

§ 803.30 Annual certification.

Manufacturers and distributors required to report under this section shall submit a certification report to FDA by the date designated for annual registration for the firm in § 807.21 of this chapter which will cover the period ending 1 month before the reporting date. The report will contain the following information:

(a) The name, address, telephone number, and FDA registration number of the firm and whether the firm is a manufacturer or distributor.

(b) A statement certifying that:

(1) The firm listed in paragraph (a) of this section has filed reports under this section during the previous 12-month period, the number of reports that were submitted to FDA, and that all MDR reportable events were submitted to FDA; or

(2) The firm listed in paragraph (a) of this section did not receive any reportable events during the previous 12-month period.

(c) The name, address, title, telephone number, and signature of the individual making the certification for the firm. This person must be a responsible person designated by the firm.

§ 803.31 Additional requirements.

(a) Requests for additional information. If FDA determines that the

protection of the public health requires information in addition to that included in the medical device reports submitted to FDA under this part, the manufacturer, distributor, or user facility shall, upon FDA's request, submit such additional information. Any request by FDA under paragraph (a) of this section shall state the reason or purpose for which the information is being requested, and specify a due date for the submission of such information.

(b) Each manufacturer is required to conduct an investigation of each reportable event in accordance with §§ 820.162 and 820.198 of this chapter.

§ 803.32 Supplemental information.

(a) Only one medical device report is required under this part if the manufacturer, distributor, or user facility becomes aware, from more than one source, of information concerning the same patient and the same event.

(b) A medical device report that would otherwise be required under this section is not required by:

(1) The manufacturer, distributor, or user facility if the manufacturer, distributor, or facility determines that the information received is erroneous in that a death, serious injury, serious illness, or the malfunction did not occur.

(2) The manufacturer or distributor, if the manufacturer or distributor determines that the information received is erroneous in that the device that is the subject of the information was manufactured or distributed by another manufacturer or distributor. A manufacturer or distributor shall forward to FDA any report that is erroneously sent to the manufacturer or distributor, with a cover letter explaining that the product in question is not manufactured or distributed by that firm.

(c) A report or information submitted by a manufacturer, distributor, or user facility under this part (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the party submitting the report or by FDA that the report or information constitutes an admission that the device, the establishment submitting the report, or employees thereof, caused or contributed to a death, serious injury, serious illness or malfunction. A manufacturer, distributor, or user facility need not admit, and may deny, that the report or information submitted under this part constitutes an admission that the device, the party submitting the report, or employees thereof, caused or contributed to a death or serious injury, serious illness or malfunction.

§ 803.33 Alternative reporting requirements.

(a) Manufacturers or distributors may request exemptions from any or all of the reporting requirements in this part. These requests are required to be in writing and to include both the information necessary to identify the firm and device and an explanation why the request is justified.

(b) FDA may grant a manufacturer or distributor, in writing, an exemption from any or all of the reporting requirements in this part and may change the frequency of reporting to quarterly, semiannually, annually, or other appropriate time periods. In granting such exemptions, FDA may impose other reporting requirements to ensure the protection of public health and safety. FDA may also authorize the use of alternative reporting media such as magnetic tape or disk, in lieu of FDA forms.

(c) FDA may revoke alternative reporting options, in writing, if FDA determines that protection of the public health justifies a return to the requirements as stated in this part.

§ 803.34 Written MDR procedures.

Device manufacturers, distributors, and device user facilities shall maintain and implement written MDR procedures in the following areas:

(a) Training and education programs informing employees about obligations under this section, including how to identify and report MDR reportable events;

(b) Internal systems that provide for timely and effective identification, communication, and evaluation of events that may be subject to MDR requirements, a standardized review process/procedure for determining when an event meets the criteria for reporting under this part, and timely transmission of complete MDR reports to FDA and/or manufacturers; and

(c) Documentation and recordkeeping requirements for:

(i) Information that may be the subject of an MDR report;

(ii) All MDR reports and information submitted to FDA and manufacturers;

(iii) Information that facilitates the submission of semiannual reports; and

(iv) Systems that ensure access to information that facilitates timely followup and inspection by FDA.

§ 803.35 Files.

(a) *Device distributors.* (1) A device distributor shall establish a device complaint file in accordance with § 820.198 of this chapter and maintain a record of any information, including any written or oral communication, received by the distributor concerning all events that were considered for possible reporting under this part. Device incident records shall be prominently identified as such and shall be filed by device. The file shall also contain a copy of any medical device report along with any additional information submitted to FDA under this part. A distributor shall maintain records that document the submission of copies of MDR reports to manufacturers.

(2) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date that the report or additional information is submitted to FDA under § 803.24(b), or for a period of time equivalent to the design and expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the report or the additional information.

(3) A device distributor shall maintain the device complaint files established under this section at the distributor's principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

(b) *Device manufacturers.* (1) A device manufacturer shall retain copies of records of any information, including any written or oral communication, received by the manufacturer concerning an event that requires a report under §§ 803.26, 803.27, and 803.28. The manufacturer also shall retain a copy of any MDR submitted to FDA and any additional information submitted to FDA. The manufacturer shall retain the records referred to in this section for 2 years or a period of time equivalent to the design and expected life of the device, whichever is greater, even if the firm has ceased manufacturing the device. The manufacturer may maintain as part of its complaint file, under § 820.198 of this chapter, the records referred to in paragraph (b)(1) of this section, provided that such records are prominently identified as MDR reportable events and filed by device. The manufacturer shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

(2) A report submitted under § 803.24 by a manufacturer shall not be

considered to comply with this part unless the event has been evaluated in accordance with the requirements of §§ 820.162 and 820.198 of this chapter. MDR files and reports shall include the information required by this section or shall contain an explanation why the information could not be obtained. The results of the analyses of the event are to be documented and maintained in the complaint file.

(c) *Device user facilities.* (1) A device user facility shall establish a device incident file and maintain a record of any information, including any written or oral communication, received by the user facility concerning an event that is subject to reporting under this part. Such information includes information that has been reviewed by the user facility in the process of determining what is a reportable event under this section, including patient records.

(2) A device user facility shall maintain copies of any records required by this section for 2 years after the date of submission of the report to FDA or the manufacturer. User facilities shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify the records required by this part.

§ 803.36 Exemptions from reporting.

The following persons are exempt from reporting:

(a) An individual who is a practitioner licensed by law to prescribe or administer devices intended for use in humans and who manufactures or imports devices solely for use in the course of that individual's professional practice.

(b) An individual who manufactures or imports devices intended for use in humans solely for such person's use in research or teaching and not for sale or under an investigational device exemption granted under parts 812 or 813 of this chapter.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

2. The authority citation for 21 CFR part 807 is revised to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

3. Section 807.3 is amended by revising paragraph (d)(2), and by adding new paragraphs (e)(5) and (n) to read as follows:

§ 807.3 Definitions.

* * * * *

(d) * * *

(2) Distribution of domestic or imported devices; or

* * * * *

(e) * * *

(5) The annual certification of medical device reports required by § 803.27 of this chapter or forwarding the certification form to the person designated by the firm as responsible for the certification.

* * * * *

(n) "U.S. designated agent" means the person designated by the owner or operator of a foreign establishment responsible for the annual certification of the number of MDR reports submitted.

4. Section 807.20 is amended by revising paragraphs (a)(4) and (a)(5), and by adding new paragraph (a)(6) to read as follows:

§ 807.20 Who must register and submit a device list.

(a) * * *

(4) U.S. designated agents and distributors;

(5) Manufactures components or accessories which are ready to be used for any intended health-related purpose and are packaged or labeled for commercial distribution for such health-related purpose, e.g., blood filters, hemodialysis tubing, or devices which of necessity must be further processed by a licensed practitioner or other qualified person to meet the needs of a particular patient, e.g., a manufacturer of ophthalmic lens blanks; or

(6) Acts as the U.S. designated agent for foreign establishments responsible for annual certification of reports.

* * * * *

5. Section 807.21 is revised to read as follows:

§ 807.21 Times for establishment registration and device listing.

(a) An owner or operator of an establishment who has not previously entered into an operation defined in § 807.2(c) shall register within 30 days after entering into such an operation and submit device listing information at that time. An owner or operator of an establishment shall update its registration information annually within 30 days after receiving registration forms from FDA. FDA will mail Form FDA–2891a to the owners or operators of registered establishments according to a schedule based on the first letter of the name of the owner or operator. The schedule is as follows:

First letter of owner or operator name	Date FDA will mail forms
A, B, C, D, E	March.
F, G, H, I, J, K, L, M	June.
N, O, P, Q, R	August.
S, T, U, V, W, X, Y, Z	November.

(b) Owners or operators of all registered establishments shall update their device listing information every June and December or, at their discretion, at the time the change occurs.

6. Section 807.22 is amended by revising paragraphs (a) and (c) to read as follows:

§ 807.22 How and where to register establishments and list devices.

(a) The first registration of a device establishment shall be on Form FDA–2891 (Initial Registration of Device Establishment). Forms are obtainable upon request from the Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, or from the Food and Drug Administration (FDA) district offices. Subsequent annual registration shall be accomplished on Form FDA–2891a (Annual Registration of Device Establishment), which will be furnished by FDA to establishments whose registration for that year was validated under § 807.35(a). The forms will be mailed to the owner or operators of all establishments in accordance with the schedule as described in § 807.21(a). The completed form shall be mailed to the above-designated address within 30 days after receipt from FDA.

* * * * *

(c) The listing obligations of the distributor are satisfied as follows:

(1) For those devices for which the distributor has also initiated or developed the specifications, Form FDA–2892 shall be submitted and the historical file maintained by the distributor;

(2) For those devices for which the distributor repackages or relabels the device, Form FDA–2892 shall be submitted and the historical file maintained by the distributor;

(3) The distributor is not required to submit a Form FDA–2892 for those devices for which such distributor did not initiate or develop the specifications for the device or repackage or relabel the device. However, the distributor shall submit, for each device, the name and address of the manufacturer. Distributors shall also be prepared to submit, when requested by FDA, the proprietary name, if any, and the

common or usual name of each device for which they are the distributors; and

(4) The distributor shall update the information required by paragraphs (c)(1), (c)(2), and (c)(3) of this section at the intervals specified in § 807.30.

7. Section 807.25 is amended by revising paragraph (b) to read as follows:

§ 807.25 Information required or requested for establishment registration and device listing.

* * * * *

(b) The owner or operator shall identify the device activities of the establishment such as manufacturing, repackaging, or distributing devices.

* * * * *

8. Section 807.40 is amended by adding paragraph (e) to read as follows:

§ 807.40 Establishment registration and device listing for foreign manufacturers of devices.

* * * * *

(e) Each foreign device establishment, whether registered or not, shall inform the Food and Drug Administration of their U.S. designated agent in writing and must update any changes in agent name, address, and/or phone number within 30 days of the date of the change. The U.S. designated agent may list on behalf of the foreign establishment if the owner or operator authorizes the agent to file Form FDA–2892 and maintain the historical file.

9. Section 807.65 is amended by revising paragraph (e) and by removing and reserving paragraph (g) to read as follows:

§ 807.65 Exemptions for device establishments.

* * * * *

(e) Pharmacies, surgical supply outlets, or other similar retail establishments making final delivery or sale to the ultimate user. This exemption also applies to a pharmacy or other similar retail establishment that purchases a device for subsequent distribution under its own name, e.g., a properly labeled health aid such as an elastic bandage or crutch, indicating "distributed by" or "manufactured for" followed by the name of the pharmacy.

* * * * *

Dated: November 8, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 91–28377 Filed 11–25–91; 8:45 am]

BILLING CODE 4160–01–M

federal register

Tuesday
November 26, 1991

Part VII

The President

Proclamation 6380—Thanksgiving Day, 1991

Digitized by Google

Federal Register
Vol. 56, No. 228
Tuesday, November 26, 1991

Presidential Documents

Title 3—

The President

Proclamation 6380 of November 25, 1991

Thanksgiving Day, 1991

By the President of the United States of America

A Proclamation

From the moment it was "conceived in liberty, and dedicated to the proposition that all men are created equal," our Nation has enjoyed the mercy and protection of Almighty God. Thus, when we join with family and friends on Thanksgiving, we celebrate not only the many blessings that we have received as individuals—including the gift of life itself—but also our great fortune as one Nation under God. On this occasion, Americans of every race, creed, and walk of life are united by a profound sense of gratitude and duty.

As we continue the Thanksgiving tradition, a tradition cherished by every generation of Americans, we reflect in a special way on the blessings of the past year. When this Nation and its coalition partners took up arms in a last-resort effort to repel aggression in the Persian Gulf, we were spared the terrible consequences of a long and protracted struggle. Indeed, the millions of people who prayed for a quick end to the fighting saw those prayers answered with a swiftness and certainty that exceeded all expectations. During the past year, we have also witnessed the demise of communism and welcomed millions of courageous people into the community of free nations.

Of course, as we give thanks for these and other developments, we also remember the less fortunate—those who do not yet share in the promise of freedom; those who do not know the comfort of peace and security; and those whose tables do not reflect prosperity and plenty.

Time and again, Scripture describes our Creator's special love for the poor. As the Psalmist wrote, "He pours contempt upon princes . . . yet sets the poor on high from affliction." In this great Nation, we have a special obligation to care for the ill and the destitute. Therefore, recalling that much will be asked of those to whom much has been given, let us resolve to make food drives and other forms of charity an increasingly important part of our Thanksgiving tradition.

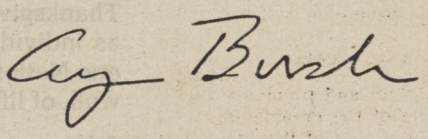
On this occasion, as we count our blessings and reach out to help the less fortunate, we also do well to remember that, in many ways, the poorest nations are those who neither recognize nor revere what our Founders called "the laws of Nature and of Nature's God." Indeed, we have seen totalitarian regimes impoverish entire peoples, not just economically, but spiritually, by denigrating religion and by denying the inherent dignity and worth of individuals. The moral bankruptcy of communism should remind every free nation of the dangers of cynicism and materialism.

Similarly, can any individual be truly rich or truly satisfied if he or she has not discovered the rewards of service to one's fellowman? Since most of us first experience the love of God through the goodness and generosity of others, what better gift could we give our children than a positive example?

Finally, as we gather with family and friends on Thanksgiving, we know that our greatest blessings are not necessarily material ones. Indeed, perhaps the best thing about this occasion is that it reminds us that God loves each and every one of us. Like a faithful and loving parent, He always stands ready to comfort, guide, and forgive. That is our *real* cause for Thanksgiving, today and every day of our lives.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Thursday, November 28, 1991, as a National Day of Thanksgiving. I urge all Americans to gather together in their homes and in places of worship on that day to offer thanks to Almighty God for the many blessings that He has bestowed upon us as individuals and as a Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of November, 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.



Editorial note: For the President's remarks on Thanksgiving, see issue No. 48 of the *Weekly Compilation of Presidential Documents*.

[FR Doc. 91-28631
Filed 11-25-91; 11:01 am
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 56, No. 228

Tuesday, November 26, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

56145-56288....1
56289-56460....4
56461-56566....5
56567-56918....6
56919-57230....7
57231-57480....8
57481-57572....12
57573-57792....13
57793-57968....14
57969-58172....15
58173-58298....18
58299-58490....19
58491-58634....20
58635-58840....21
58841-59204....22
59205-59848....25
59849-60044....26

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
462....58653

3 CFR

Proclamations:
6368....56145
6369....56919
6370....57793
6371....57795
6372....57797
6373....57967
6374....57969
6375....58299
6376....58489
6377....59199
6378....59201
6379....59849
6380....60043

Executive Orders:
May 28, 1912 (Revoked by PLO 6906)....57806
November 8, 1912 (Revoked by PLO 6905)....57805
May 31, 1915 (Revoked by PLO 6908)....57806
854 (Amended by EO 12781)....59203
11339 (Revoked by EO 12781)....59203
12594 (Amended by EO 12782)....59847
12735 (Continued by Notice of November 14, 1991)....58171
12780....56289
12781....59203
12782....59847

Administrative Orders

Memorandums:
October 21, 1991....56147

Presidential Determinations:
No. 92-4 of October 24, 1991....56567
No. 92-5 of November 13, 1991....58839

Notices:
November 14, 1991....57969

5 CFR

Proposed Rules:
531....56276
550....56276
575....56276
771....56276

7 CFR

226....58173
301....57573, 57579
318....59205
401....58301
434....56569
435....56569
441....57231
445....57971
446....57971
447....56569
451....56569
780....59207
802....56293
907....57231, 58175
908....57231
979....58302
981....58841
1427....59851
1435....59196
1600....56275
1610....56461
1942....58177
3200....57950
3400....58146

Proposed Rules:
53....58518
54....58518
Ch. IV....56605
401....57296
425....58323
959....58324
1001....58972
1002....58972
1004....58972
1005....58972
1006....58972
1007....58972
1011....58972
1012....58972
1013....58972
1030....58972
1032....58972
1033....58972
1036....58972
1040....58972
1044....58972
1046....58972
1049....58972
1050....58972
1064....58972
1065....58972
1068....58972
1075....58972
1076....58972
1079....58972
1093....58972
1094....58972
1096....58972
1097....58972
1098....58972
1099....58972

1106.....58972
1108.....58972
1124.....58972
1126.....58972
1131.....58972
1134.....58972
1135.....58972
1137.....58972
1138.....58972
1139.....57298, 58972, 59223
1413.....56335
1951.....58325
1955.....56474

9 CFR

78.....58635

Proposed Rules:

1.....57991
2.....57991

10 CFR

171.....57587, 57590
1049.....58491

Proposed Rules:

Ch. I.....57603
51.....59898
600.....56944

11 CFR

100.....56570
102.....56570
106.....56570, 57864
110.....56570
113.....56570
116.....56570
9001.....56570
9002.....56570
9003.....56570
9004.....56570
9005.....56570
9006.....56570
9007.....56570
9012.....56570
9031.....56570
9032.....56570
9033.....56570
9034.....56570
9035.....56570
9036.....56570
9037.....56570
9038.....56570
9039.....56570

12 CFR

201.....58303
203.....59853
505.....59865
509.....59865
545.....59865
552.....59865
563.....59865
563b.....59865
709.....56921
922.....56691, 58964
931.....56691, 58964
932.....56691, 56929, 58964
936.....58639
1410.....57232
1510.....57481

Proposed Rules:

208.....56949
225.....56949
704.....59224
741.....59224
932.....59898
1102.....59899
Ch. X.....58653

13 CFR

101.....59211
108.....57588, 58610
120.....57588, 58610

Proposed Rules:

121.....59902

14 CFR

21.....59211
25.....59211
39.....56149-56153, 56462, 56929, 57233-57236, 57373, 57483-57485, 57588, 57590, 58494, 59212, 59867, 59868
43.....57570
61.....56571
71.....56463, 56464, 56931, 57486, 57799, 57971, 57973, 58495
75.....57973, 58496
97.....56464, 56571
1204.....57591

Proposed Rules:

Ch. I.....56174
21.....56605
25.....56605
39.....56174-56177, 57994, 58002, 58189, 58193, 58328, 58526, 58653, 58655, 59234, 59902
71.....56480, 56481, 56607, 56951, 56952, 57866, 57867
75.....56608
255.....57603

15 CFR

400.....56544
2301.....59168, 59185

Proposed Rules:

925.....57868
1150.....56953, 57869

16 CFR

Proposed Rules:

453.....58330

17 CFR

210.....57237
229.....57237
230.....56294
239.....56294, 57237
240.....57237
270.....56154, 56294
274.....56294

Proposed Rules:

30.....58527
180.....56482
240.....57605, 58194
249.....57605

18 CFR

2.....56544, 57255, 58844
11.....58497
154.....56544, 57255, 58844
157.....56544, 57255, 58844
271.....56466
284.....56544, 57255, 58844
375.....56544, 57255, 58844
380.....56544, 57255, 58844
381.....58498

19 CFR

101.....57487

Proposed Rules:

101.....56179
141.....56608
142.....56608

20 CFR

404.....57928, 58845
416.....57928
655.....56860

Proposed Rules:

416.....58198

21 CFR

3.....58754
5.....58758
520.....59331

Proposed Rules:

803.....60024
807.....60024

22 CFR

Proposed Rules:

514.....59822, 59837

23 CFR

140.....56576
1327.....57255, 57373

Proposed Rules:

1212.....56692

24 CFR

86.....57488
Ch. I.....56544
570.....56902
813.....57489
888.....59996
913.....57489

Proposed Rules:

10.....57869
17.....56336
81.....58653
203.....58762
207.....59150
213.....58762, 59150
214.....58158
215.....59150
220.....59150
221.....59150
231.....59150
232.....59150
234.....58762, 59150
236.....59150
242.....59150
880.....59150
881.....59150
882.....59150
883.....59150
884.....59150
885.....59150
886.....59150
887.....59150
961.....57871
965.....59150

25 CFR

Ch. III.....57373

Proposed Rules:

83.....59843
211.....58734
212.....58734
225.....58734
502.....56278, 56282, 57373

26 CFR

1.....58003
52.....56303
602.....56303

Proposed Rules:

1.....56545, 56609, 57374, 57605, 58003
301.....56545, 58199

27 CFR

9.....59213

Proposed Rules:

4.....58199

28 CFR

0.....56578
16.....58304
542.....58634

29 CFR

508.....56860
570.....58626
1910.....57593
2615.....57977
2617.....57980
2676.....57983

Proposed Rules:

1910.....57036
1915.....57036
1926.....57036
2617.....58014

30 CFR

202.....57256
206.....57256
210.....57256
212.....57256
800.....59992
915.....56578
944.....58846
948.....58306

Proposed Rules:

48.....59235
75.....59235
77.....59235
795.....57376
816.....59904, 60012
817.....60012
870.....57376
872.....57376
873.....57376
874.....57376
875.....57376
876.....57376
886.....57376
916.....58018

31 CFR

211.....56931
800.....58774

32 CFR

Ch. I.....58179
199.....59870, 59873
247.....58179
275.....57984
285.....58179
286i.....58179, 59217
287.....58501
290.....56932
292a.....56595, 57799
292.....58501
293.....59217
294.....57984
295.....58179
297.....58179
298.....58180

298b.....58180
299.....58501
310.....57800
311.....57801
313.....57801
314.....57801
315.....57801
317.....57802
318.....57802
319.....56595
321.....57802
322.....57802
323.....57803
701.....59217
719.....57803
1286.....57803

Proposed Rules:
199.....57498
251.....59236

33 CFR

117.....57287, 57490, 59880
330.....59110

Proposed Rules:
26.....58292
95.....56180
100.....56180
117.....56609, 56610
155.....58202
157.....56284
173.....56180
174.....56180
175.....56180
177.....56180
179.....56180
181.....56180
183.....56180
207.....59913

34 CFR

318.....57198
328.....56456
690.....56911

Proposed Rules:
363.....57778
772.....59158

35 CFR

60.....59881

36 CFR

228.....56155
1254.....58311

Proposed Rules:
62.....58790

37 CFR

201.....59884
202.....59884
203.....59884
204.....59884
211.....59884
307.....56157

38 CFR

1.....59217
3.....57985
4.....57985
8.....57492

39 CFR

111.....57724, 58858
265.....56933, 57805, 57984
602.....58858

Proposed Rules:
3001.....56955

40 CFR

51.....57288
52.....56158, 56159, 56467, 57492, 58501
60.....59886
62.....56320
80.....57986
81.....56694
122.....56548
261.....58312
271.....57593
372.....58859
721.....56470

Proposed Rules:
51.....59238
52.....56485, 58528, 59238
60.....59238
81.....58656
122.....56555
131.....58420
704.....57144
764.....59239
799.....57144

41 CFR

101-39.....59886
101-47.....56935
302-4.....57289
303-1.....57289
303-2.....57289

42 CFR

62.....56596
110.....59218, 59331
405.....59502
412.....59218
413.....59218, 59502
415.....59502
483.....59331

Proposed Rules:
36.....56691
400.....56612
413.....59240, 59979
420.....56612
421.....56612

43 CFR

Public Land Orders:
6884.....56275
6849 (Corrected by PLO 6907).....57806
6890.....58122
6901.....56321
6902.....56322
6903.....56936
6904.....56936
6905.....57805
6906.....57806
6907.....57806
6908.....57806
6909.....57807
6910.....59219

Proposed Rules:
4.....58330
2300.....59914
3260.....59240

44 CFR

64.....58313

Proposed Rules:
83.....58019

45 CFR

Proposed Rules:
301.....58205
303.....58205
Ch. XXV.....57404

46 CFR

583.....56322

Proposed Rules:
25.....56180
31.....56284
32.....56284
35.....56284
382.....57807
552.....57298
586.....56487

47 CFR

Ch. I.....56937
1.....56599, 57596, 57808, 58503
2.....57808
13.....56599
15.....57823
21.....57596, 57806
22.....58315, 58503
64.....56160
68.....56160, 57823
73.....56166-56169, 56472, 56473, 56602, 56938, 56939, 57290-57294, 58315, 58512, 58513, 58862
74.....56169, 57596, 57808
78.....57596
80.....57495, 57987
94.....57808
97.....56171

Proposed Rules:
Ch. I.....57300, 58863
2.....56611
22.....58529
69.....57301
73.....56181, 56182, 56489, 56490, 57302, 57606, 57608, 57871, 58207, 58530, 58531, 58864
76.....56329
80.....56955, 57501
90.....56611

48 CFR

328.....58315
352.....57602, 58315
519.....59220
950.....57824
952.....57824
970.....57824
1631.....57496
1652.....57496
1801.....56691
1815.....56691
1852.....56691

Proposed Rules:
15.....57182
23.....58296
52.....58296
515.....56956
538.....56956
935.....56621
1804.....58865
1870.....58865

49 CFR

1.....59892
171.....57560
173.....57560
245.....59893
571.....56323, 56940, 58513
572.....57830
575.....57988
821.....56172
1145.....58317
1313.....58320

Proposed Rules:
107.....56962
171.....56962
533.....58020
541.....56339
552.....56343
571.....58662
582.....56963
1063.....56490
1152.....58868

50 CFR

16.....56942
17.....56325, 57844
32.....58180
33.....58180
216.....56603
222.....58619
227.....58184
247.....56603
285.....56544
298.....58184
301.....57294
611.....56603
630.....59220
641.....58188, 58650
646.....59979
663.....56603, 58321
672.....56943, 57989
680.....59894
685.....58516, 59896

Proposed Rules:
12.....57872
13.....57872
14.....57502, 57872
17.....56344, 56491, 56882, 57503, 58020, 58026, 58332-58348, 58664, 58804, 58869, 59917
20.....57872
21.....57872
Ch. VI.....58214
222.....58869
611.....58531, 58666, 59920
641.....59922
646.....57302
652.....58537
663.....59241
672.....56355, 56623, 58214, 58666, 59922
675.....56355, 56623, 58214, 58531, 59922
681.....58029

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

S. 1745/Pub. L. 102-166
Civil Rights Act of 1991. (Nov. 21, 1991; 105 Stat. 1071; 30 pages) Price: $1.00
Last List November 25, 1991