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Briefing on How To Use the Federal Register
For information on the briefing in St. Louis, MO, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

ST. LOUIS, MO

WHEN: April 23; at 9:00 a.m.

WHERE: Room 1612,
Federal Building,
1520 Market Street,
St. Louis, MO

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Separate Parts In This Issue

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.

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Presidential Documents

Title 3—

The President

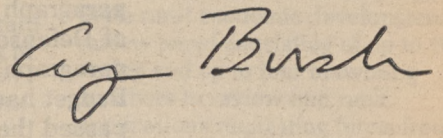
Presidential Determination No. 92–19 of March 16, 1992

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $18,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the Fund) to meet the unexpected and urgent refugee and migration needs of Cambodians and Burmese. Of this amount up to $15,000,000 will be used to support the repatriation of Cambodian refugees and displaced persons; $3,000,000 will be contributed to assist Burmese refugees. These funds may be contributed on a multilateral or bilateral basis as appropriate to international organizations, private voluntary organizations, and other governmental and non-governmental humanitarian organizations.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, March 16, 1992.

[FR Doc. 92–7988
Filed 4–2–92; 2:53 pm]
Billing code 3195–01–M

Presidential Documents

Memorandum of March 20, 1992

Delegation of Responsibilities Under Public Law 102–229

Memorandum for the Secretary of State, the Secretary of Defense [and] the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate:

1. to the Secretary of State the authority and duty vested in the President under section 211(b) of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 108 of the Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of 1992 (Public Law 102–229) (the Act); and

2. to the Secretary of Defense the authorities and duties vested in the President under sections 212, 221, 231, and 232 of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 108 of the Act.

The Secretary of Defense shall not exercise authority delegated by paragraph 2 hereof with respect to any former Soviet republic unless the Secretary of State has exercised the authority and performed the duty delegated by paragraph 1 hereof with respect to that former Soviet republic. The Secretary of Defense shall not obligate funds in the exercise of authority delegated by paragraph 2 hereof unless the Director of the Office of Management and Budget has made the determination required by section 221(e) of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 108 of the Act.

The Secretary of State is directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, March 20, 1992.

[FR Doc. 92–7989
Filed 4–2–92; 3:10 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1940, 1951

[Regulation Identifier Number: 0575-AB00]

System for Delivery of Certain Rural Development Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adds a new regulation, subpart T, "System for Delivery of Certain Rural Development Programs," to part 1940—General. This action is taken by FmHA to comply with legislation authorizing a 5-year pilot program whereby a State rural economic development review panel will be established in up to five States for a particular period of time to review and rank applications requesting assistance from designated rural development programs. It also authorizes the use of grant funds, from grants appropriated under provision of section 306(a) of the Consolidated Farm and Rural Development Act, for administrative costs associated with the review panel operations, and to allow loan level transfers within a State among certain rural development programs. The intended effect of this action is to permit up to five States to establish a rural economic development review panel to review and rank certain rural development program applications in order to help assure that the social and economic needs of rural areas are funded according to acceptable development plans for rural areas within a State.

EFFECTIVE DATE: May 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mildred W. McGlothin, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, 14th and Independence Avenue, SW., room 6330, Washington, DC 20250, Telephone (202) 720-9589.

SUPPLEMENTARY INFORMATION:

Classification: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "non-major." The action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial.

Intergovernmental Review: The grant program will be listed in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact: This action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act: The undersigned has determined that this action will not have a significant economic impact on small entities. Eligibility is extended only to States and in terms of total number of entities, less than 25 will be affected annually.

Background

Under current FmHA procedures for funding or guaranteeing Community and Business Program projects, the Agency reviews and ranks applications, assigning particular weight to important factors such as the type of applicant, population and income. FmHA also considers availability of funds within each program. Pursuant to the provisions of title XXIII of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624 (FACT Act), this action establishes a 5-year pilot program that will modify the method by which applications are selected for funding. The pilot program ends September 30, 1996. In particular, this proposal adds a new regulation to select up to five States for a particular period of time to operate a modified application review and ranking procedure. Once designated for participation in this pilot program, this procedure will become the State's exclusive method by which allocated funds are disbursed to eligible applicants. Selected States cannot "opt out" of the procedure during the established period of time for which they were designated and revert to the old ranking and applicant selection process. Governors will establish a State rural economic development review panel consisting of up to 16 voting and up to four nonvoting members to review and rank applications requesting funds from designated rural development programs. Projects selected for funding under the panel review process will be selected considering area and regional development plans of the State. FmHA will fund projects based upon the panel's ranked list as funds are available. The regulation also authorizes loan level transfers within a designated State among certain loan programs, and authorizes grant funds to pay administrative costs associated with panel operation.

Even though the FACT Act authorized loan level transfers and an appropriation of funds for the panels, Federal funds have not been appropriated or otherwise made available by Congress for fiscal year (FY) 1992. Therefore, it will be necessary for designated States to fund all panel expenses. Also, the Appropriations Act for fiscal year 1992, Public Law 102-142, prohibits loan level transfers. Thus, sections 1940.962 and 1940.963 of this subpart are not applicable at this time.

Comments on the Proposed Rule

FmHA published a proposed rule to implement these changes at 56 FR 46576 (September 13, 1991).

The Agency received 24 responses on the proposed rule from States, interest groups, nonprofit organizations, national associations, utility companies and associations, universities, and various organizations associated with rural development. The responses contained over 80 comments. All comments were considered when preparing this final rule; however, all comments have not been addressed separately since many comments could be addressed collectively. Responses to comments received are grouped according to subject matter.

General Comments

Four commenters endorsed the 5-year pilot program and complimented FmHA for implementation. The Agency was also complimented on its interpretation of the law.

Three commenters objected to changing the present project selection criteria. The commenters felt that FmHA's present method has proven adequate to meet State's needs.

Commenters stated that the method works well to ensure appropriateness of funding priorities, strategies and allocation of funds to rural communities. The Agency feels that this pilot program will provide an opportunity to evaluate the effectiveness of its present project selection criteria and is proceeding with the rule.

Supplemental Information

Two comments were received on the supplemental information included with the proposed rule. One comment suggested that the proposal is controversial and is part of ongoing controversy in the congressional appropriations process. No change was made. FmHA's interpretation of the law's intent is to establish a pilot program to determine if Federal funds for rural development programs can be directed where they are most needed, in individual States, by a process other than Federal selection. A comment also questioned the Environmental Impact section of the proposal arguing that a shift of program funds according to section 1940.963 could negatively impact areas with water and waste problems if economic development activities were ranked higher. FmHA expects the panel to be prudent in selection of projects to fund. Since economic development is dependent upon an adequate source of water and method of waste disposal, the panel will most assuredly suggest that communities experiencing problems with water and waste disposal facilities receive funds to correct the situations. Also, States are aware that they must comply with the requirements of the Safe Drinking Water Act and Clean Water Act. As a result, it is still the Agency's opinion that no Environmental Impact Assessment is unnecesary, since the rule change does not significantly effect the quality of the human environment.

"Opt Out" Provision

Six commenters opposed the requirement that "designated States cannot" "opt out" of the procedure and revert to the old ranking and applicant selection process. Commenters felt that this requirement was not the intent of the statutory language in title XXIII of the FACT Act and that the provision should be dropped or revised to provide States an escape clause that allows States to revert to the old process. In considering this important matter, the Agency has determined that the language in the proposed rule regarding the "opt out" provision is an accurate reflection of the Statute. However, the final rule includes changes that establish shorter periods of time in which a State is required to stay in the program. Thus, the Agency will implement the pilot program through a series of 1-year periods, to run consecutively until September 30, 1996. If a State does not wish to continue in the pilot, it can revert back to the old allocation procedure, according to the provisions at section 1940.954(a). Changes have also been made to allow a designated State to remain in the pilot program for another time period (provided all eligibility requirements continue to be met) without submitting another application. Once a designated State meets eligibility requirements, the State is expected to participate in the pilot program during the newly established shorter time periods.

Transfer of Funds

One commenter requested that the provision to transfer funds among designated loan programs be allowed in all States among all programs; another commenter noted correctly that the transfer of funds is prohibited in the Agency's FY 1992 Appropriation Act and feels the provision should be removed from the regulation. Even though appropriated funds for 1992 may not be transferred, the Agency is leaving this provision in the final rule. The intent of this provision in the pilot program is to test the impact upon rural development needs when appropriated funds could be transferred. It is possible that future-year appropriations will not restrict loan level transfers. Therefore, while the final rule does have this language, it is rendered ineffective for FY 1992.

One commenter questioned why the National Office must concur with each transfer of direct loan funds as recommended by the State Director. The commenter expressed belief that it would be more appropriate for the State Director to receive concurrence from the panel. No change was made to the final rule. The National Office must concur in all loan level transfers in order to maintain control over fund balances in the appropriation accounting system.

Minority Banks

One commenter suggested that § 1940.968(k)(3), which encourages States in the pilot program to utilize banks owned by at least 50 percent minority group members for deposit and disbursement of funds, be revised to encourage the use of minority banks only when rates and terms of deposit accounts are competitive with other commercial banks. The final rule was not changed since this provision is a suggestion only; the selection of a bank will be the responsibility of the designated State.

Pool and Reserve

Several commenters objected to a separate pooling for designated States and disagreed with the requirement that prohibits designated States from participating in the National Office reserve, which includes funds pooled from among nondesignated States. Commenters stated that this requirement could prove to be a major disincentive for State participation in the pilot program. It was requested that this requirement be removed from the rule. Section 2316(a) of the FACT Act established a separate pooling for States participating in this pilot program. Present designated rural development program regulations require two pooling dates for major programs; midyear, which normally occurs in April, and yearend which occurs in August. The final rule did not change the separate pooling for designated States; however, the final rule has been modified to allow designated States access to funds pooled from nondesignated States, under limited conditions.

Designated States

Seven comments were received regarding the process used to select the five designated States.

One commenter recommended that only States with a small program be

designated so as to minimize adverse effects on the least number of people. The recommendation was considered but not incorporated in the final rule. Initially, the Statute does not provide for limiting the pilot only to those States with small programs. More importantly, since it is the Agency's view that Congress established the pilot program to determine whether it was a better method of distributing the loans and grants than the current method, the best way to make this determination is to consider a representative variety of States to participate in the pilot program. Therefore, any State that applies will be considered, and selection of designated States will be made based upon criteria within the regulations—not on the size of the State's program.

One commenter urged the Agency to replace ineligible States to ensure the 5-year pilot program is fully tested. The Agency felt this recommendation is not desirable. States designated for the first established time period may have until September 1, 1992, if needed to meet eligibility requirements. Four 1-year time periods will then remain to test the program. Designated States are expected to remain eligible and participate in the pilot program during the period for which they are designated. However, if a designated State does not wish to participate in the following year of the pilot program, § 1940.954(a) provides that another State may be selected as a replacement.

One commenter requested clarification on eligibility requirements for designated States based upon §§ 1940.954(a)(2)(iv) and 1940.959. Eligibility requirements are set forth in section 1940.954(e). Section 1940.954(a)(2)(iv) was written so that a State could apply to participate in this program based upon its proposal to meet eligibility requirements, if selected. If the State is not selected, time and resources have not been needlessly expended. There is no duplication or overlapping in the application process. In order to be found eligible, a State must either show it is already complying with the criteria (i.e. area plans are already in place State-wide), or show how it proposes to comply with the criteria (i.e. develop the standards to be used in formulating area plans). Thus, if a State submits evidence of complying with the eligibility requirements at the time the State applies, instead of proposing how it would meet eligibility requirements at a later time, this evidence need not be resubmitted, except for subsequent fiscal years.

One eligibility requirement requires the selected State to establish a review panel. Panel duties and responsibilities include the development of policy and criteria to review and evaluate area plans. Section 1940.959 sets forth the information that should be included in area plans submitted to the panel for review. Each State selected to participate will develop its own policy and criteria to use when evaluating area plans, based upon the technical information included in § 1940.959. How and when plans are developed is the State's responsibility, but no project can be ranked for funding by the panel unless a development plan has been established for the area in which the project is located.

Section 1940.954(d) of the proposed rule provided that the FmHA State Director would review the State's submission and recommend whether the State was eligible. One commenter was concerned that a State Director that opposed the program could include subjective evaluations in the recommendations to the FmHA Administrator. The commenter recommended that the final rule explicitly limit a State Director's recommendation to the matter of whether a State has met its eligibility requirements. The final rule was changed to remove reference to the State Director's participation in the selection and eligibility process; instead, the Under Secretary for Small Community and Rural Development will complete the review and selection process.

One commenter stated that § 1940.951 does not provide criteria for selecting designated States, and suggested that the final rule include these factors, such as commitment from the State of resources to administer the panel and provide technical assistance to rural communities seeking funds under this demonstration. The final rule does not include changes to § 1940.951. States will be selected based upon the information submitted in accordance with § 1940.954. Although the State need not specifically commit resources, as the comment suggests, the State does have to submit a budget, according to § 1940.954(a)(3), that includes projections of income and expenses associated with the panel's operation. Since Congress did not appropriate or otherwise make funds available for the panels this fiscal year, the designated States' budgets must absorb all expenses from their own resources.

Three commenters strongly opposed the FmHA Administrator receiving applications and determining which States will be selected, and recommended that the Under Secretary for Small Community and Rural Development manage this process. The final rule has been changed to remove reference to the FmHA Administrator and State Director. The Under Secretary for Small Community and Rural Development will select States and determine eligibility.

Panel/Panel Members

The Statute provides that applications for rural development programs be reviewed and ranked by a "State Rural Economic Development Review Panel." The panels will have up to 16 voting and four non-voting members who will be selected based on a variety of criteria. Many comments were received regarding the panel. Recommendations were made to include members from various other organizations. Commenters also recommended that each State be allowed to assemble its own panel according to needs and resources and without Federal oversight. The Agency is aware that there are numerous other organizations with expertise in rural development; however, the final rule includes only those members representing organizations as specified in Section 2316 of the FACT Act. Each State will select panel members from among the specified organizations to provide uniformity among the designated States.

One commenter suggested that the panel meet monthly. The final rule was changed to add that the panels should meet as frequently as is necessary to ensure that applications are reviewed and ranked in a timely manner, but not less frequently than quarterly.

One commenter requested clarification of § 1940.956(c) regarding the number of panel members required. Language in the proposed rule followed that in the Statute which states that the panel may include up to 16 voting members, but failure to appoint a full 16-member panel shall not prevent a State from being determined eligible. No change was made in the final rule.

One commenter suggested that FmHA set a time limit for filling panel vacancies. The final rule was revised to require the vacancy to be filled prior to the third panel meeting held after the vacancy occurred. The State coordinator will notify the State Director, in writing, if the vacancy will not be filled.

Regarding § 1940.956(c)(5)(ii), one commenter questioned whether the Governor would select between two statewide healthcare associations or two statewide banking associations. This section of the final rule has been reworded for clarity.

Area Development Plans

The following comments relating to area development plans have not been added to the final rule. An indication of why the Agency did not include the comments in the final rule is included.

Several comments expressed concern about the costs associated with developing plans for all areas. It was suggested that States be required to provide technical and financial assistance; that the costs for preparing area development plans be considered an eligible cost for use of panel grant funds; that plans be developed on an as-needed basis, and the question was asked as to whether or not plans must be approved by FmHA. Panel grans are only authorized to pay administrative costs associated with panel duties and responsibilities. Since preparing area development plans is not a responsibility of the panels, grant funds cannot be used to pay for the plan preparation. The panel is responsible for reviewing and ranking applications that are consistent with the State's area and regional development plans. Before a project can expect to receive funds from a designated rural development program, an acceptable plan that includes the area in which the project is located must be in place. States may need to provide technical and financial resources to assure that plans are developed, as needed, for areas where projects are expected to be financed in whole or in part with designated rural development program funds. While it is the panel's responsibility to review, evaluate, and accept plans based upon established criteria, it is not the panel's responsibility to develop the plans themselves, or to fund the development of the plans.

Some comments expressed concern that the items to be addressed when preparing area development plans, at § 1940.959, should be considered as guidelines rather than as a specific recipe. The items that are included must, according to the Statutes, be addressed in the plans; nevertheless, the plans may go beyond the list and address other issues.

Several commenters suggested various groups that should be involved in formation of the plans; to give weight to plans developed by certain groups; that weights be consistent among the five designated States, and that the rule provide guidance regarding the composition of local intergovernmental development councils. The Agency recognizes that additional weights and input from various groups could be incorporated; thus, added issues can be addressed in area development plans, and the panel can consider these issues in its reviews and evaluation of the plans.

The following comments relating to area development plans have been added to the final rule.

One comment requested a clarification on the issue of applying budget and fiscal control processes to the plan. This criteria is intended to assure that the plan addresses how costs associated with carrying out planned development will be covered. The Agency recognizes that budgeting is the primary means of financial management and control for all governments. Additional language has been added to the final rule for clarification.

Several comments were directed toward the use and acceptability of existing plans. The final rule has been changed to state that existing area plans are acceptable, under certain conditions.

Application Review and Ranking

Several comments were received regarding submission of applications to the panel. Recommendations suggested that applications be submitted directly to the panel; that applications be ranked on the merits of the proposed project and not on whether it is included in an area plan; that when an applicant is notified that a panel review is underway, a timeframe should be given within which they would be notified of the results of the review. The final rule does not include these recommended changes. Applications are submitted to FmHA prior to review by the panel in order to determine eligibility. If an applicant is not eligible for FmHA assistance, panel review is not necessary. Only eligible applicants will be reviewed and ranked by the panel. The Statute requires that an acceptable area development plan be in place that covers the area in which the project is located, before an application can be ranked. A timeframe to notify applicants of the results of the panel review was not added to the final rule since the Agency cannot determine the time needed by the panel to review and rank applications.

One commenter requested that availability of the panel's list of ranked applications to the public be mandatory. The Agency believes the language in the proposed rule is sufficient. Although States are not required to publish the list, the list will be made available to all interested parties on request.

Several comments were made regarding final funding decisions and the documentation required when the State Director does not fund projects according to the panel's ranked list. Another comment requested that an appeal process be established to appeal the State Director's funding decision if it differs from the panel and when a panel violates its own policies. The State Director will make final funding decisions based upon the panel's ranked list and on availability of program funds. The State Director can deviate from the ranked list only in very limited circumstances. If funds are not sufficient to allow funding of the panel's highest ranked project(s), the project(s) next in line will be funded based on program funds that are available. An appeal process is available under current applicant notification procedures in each designated rural development program regulation. Program regulations are available in any FmHA State or District office.

Regarding the policy and criteria used by the panel to rank applications for business related projects, at § 1940.956(b)(1)(ii)(A), the commenter requested that the final rule state that the list is not in rank order. The final rule has been changed accordingly.

Designated Agency

One commenter requested that the purpose of some of the designated agency's responsibilities at § 1940.958, be clarified and, in particular, the purpose of identifying alternative funding sources. Although the State must designate an agency to assist the panel, the extent to which the panel uses the agency is at the discretion of each panel. The designated agency may identify alternative funding sources when FmHA funding is not sufficient to fund projects ranked by the panel. No changes were made in the final rule.

Efficient Operation

One commenter recommended that changes be made to include principles that would maximize the effectiveness of development efforts—such as, local stake-holding, interagency cooperation and maximum decision making at the local level. No changes were made regarding these comments. Any State that participates in this program must use its own resources to fund panel expenses, since no funds were appropriated or otherwise made available this fiscal year. The diversity of panel members provides interagency cooperation and assures local level decision making.

One commenter suggested that the Agency needs to focus on requiring all rural development programs and organizations to work together, to reduce overlap and duplication and to establish cooperative work agreements.

The commenter also had a concern for the need to establish another level of bureaucracy. No change was made to the final rule. This rule changes only the way in which applications are reviewed and selected for funding. The Agency has memorandums of understanding with several other Federal agencies that help to reduce overlap and duplication and promote a good working relationship among those agencies. Program regulations also provide for joint funding and for the adoption of environmental assessments completed by other Federal agencies.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant program—Housing and Community Development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1901—PROGRAM RELATED INSTRUCTIONS

1. The authority citation for part 1901 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Civil Rights Compliance Requirements *C*

2. Section 1901.204 is amended by adding paragraph (a)(23) to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(23) System for Delivery of Certain Rural Development Programs Panel Grants.

* * * * *

PART 1940—GENERAL

3. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

4. Section 1940.590 is amended by adding paragraph (g) to read as follows:

§ 1940.590 Community and Business Programs appropriations not allocated by State.

* * * * *

(g) *System for Delivery of Certain Rural Development Programs Panel Grants.* Control of funds will be retained in the National Office and made available to eligible States.

5. Subpart T of part 1940, consisting of §§ 1940.951 through 1940.1000, is added to read as follows:

Subpart T—System For Delivery of Certain Rural Development Programs

Sec.

Subpart T—System for Delivery of Certain Rural Development Programs

§ 1940.951 General.

This subpart sets forth Farmers Home Administration (FmHA) policies and procedures for the delivery of certain rural development programs under a rural economic development review panel established in eligible States authorized under sections 365, 366, 367, and 368 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), as amended.

(a) If a State desires to participate in this pilot program, the Governor of the State may submit an application to the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, room 219–A, Administration Building, Washington, DC 20250 in accordance with § 1940.954 of this subpart.

(b) The Under Secretary shall designate not more than five States in which to make rural economic development review panels applicable during any established time period for the purpose of reviewing and ranking applications submitted for funding under certain rural development programs. The following time periods have been established for participation in this pilot program:

First period—Balance of fiscal year (FY) 1992 to September 30, 1993;
Second period—October 1, 1993 to September 30, 1994;
Third period—October 1, 1994 to September 30, 1995; and
Fourth period—October 1, 1995 to September 30, 1996.

The State will be bound by the provisions of this pilot program only during the established time period(s) for which the State is designated. If a designated State does not remain an eligible State during the established time period(s) for which the State was designated, the State will not be eligible to participate in this program and cannot revert to the old ranking and applicant selection process.

(c) Assistance under each designated rural development program shall be provided to eligible designated States for qualified projects in accordance with this subpart.

(d) Federal statutes provide for extending FmHA financially supported programs without regard to race, color, religion, sex, national origin, marital status, age, familial status, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts.)

§ 1940.952 [Reserved]

§ 1940.953 Definitions.

For the purpose of this subpart:

Administrator. The Administrator of FmHA.

Area plan. The long-range development plan developed for a local or regional area in a State.

Designated agency. An agency selected by the Governor of the State to provide the panel and the State Coordinator with support for the daily operation of the panel.

Designated rural development program. A program carried out under sections 304(b), 306(a), or subsections (a) through (f) and (h) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), as amended, or under section 1323 of the Food Security Act of 1985, for which

funds are available at any time during the FY under such section, including, but not limited to, the following:

(1) Water and Waste Disposal Insured or Guaranteed Loans;

(2) Development Grants for Community Domestic Water and Waste Disposal Systems;

(3) Technical Assistance and Training Grants;

(4) Emergency Community Water Assistance Grants;

(5) Community Facilities Insured and Guaranteed Loans;

(6) Business and Industry Guaranteed Loans;

(7) Industrial Development Grants;

(8) Intermediary Relending Program;

(9) Drought and Disaster Relief Guaranteed Loans;

(10) Disaster Assistance for Rural Business Enterprises;

(11) Nonprofit National Rural Development and Finance Corporations.

Designated State. A State selected by the Under Secretary, in accordance with § 1940.954 of this subpart, to participate in this program.

Eligible State. With respect to a FY, a State that has been determined eligible in accordance with § 1940.954 (e) of this subpart.

Nondesignated State. A State that has not been selected to participate in this pilot program.

Qualified project. Any project: (1) For which the designated agency has identified alternative Federal, State, local or private sources of assistance and has identified related activities in the State; and

(2) To which the Administrator is required to provide assistance.

State. Any of the fifty States.

State coordinator. The officer or employee of the State appointed by the Governor to carry out the activities described in § 1940.957 of this subpart.

State Director. The head of FmHA at the local level charged with administering designated rural development programs.

State rural economic development review panel or "panel". An advisory panel that meets the requirements of § 1940.956 of this subpart.

Under Secretary. In the U.S. Department of Agriculture, the Under Secretary for Small Community and Rural Development.

§ 1940.954 State participation.

(a) *Application.* If a State desires to participate in this pilot program, the Governor may submit an original and one copy of Standard Form (SF) 424.1, "Application for Federal Assistance (For Non-construction)," to the Under Secretary. The five States designated by the Under Secretary to participate in the first established time period will be selected from among applications received not later than 60 calendar days from the effective date of this subpart. If a designated State desires to participate in additional time periods, applications are not required to be resubmitted; however, the Governor must notify the Under Secretary, in writing, no later than July 31 of each FY, and the State must submit evidence of eligibility requirements each FY in accordance with § 1940.954 (e)(2) of this subpart. Beginning in FY 1993, applications must be submitted to the Under Secretary no later than July 31 if a State desires to be selected to fill vacancies that occur when designated States do not roll over into another established time period. States should include the following information with SF 424.1:

(1) A narrative signed by the Governor including reasons for State participation in this program and reasons why a project review and ranking process by a State panel will improve the economic and social conditions of rural areas in the State. The narrative will also include the time period(s) for which the State wishes to participate.

(2) A proposal outlining the method for meeting all the following eligibility requirements and the timeframes established for meeting each requirement:

(i) Establishing a rural economic development review panel in accordance with § 1940.956 of this subpart. When established, the name, title, and address of each proposed member should be included and the chairperson and vice chairperson should be identified.

(ii) Governor's proposed designation of a State agency to support the State coordinator and the panel. The name, address, and telephone number of the proposed agency's contact person should be included.

(iii) Governor's proposed selection of a State coordinator in accordance with § 1940.957 of this subpart, including the title, address, and telephone number.

(iv) Development of area development plans for all areas of the State that are eligible to receive assistance from designated rural development programs.

(v) The review and evaluation of area development plans by the panel in accordance with § 1940.956 of this subpart.

(vi) Development of written policy and criteria used by the panel to review and evaluate area plans in accordance with § 1940.956 of this subpart.

(vii) Development of written policy and criteria the panel will use to evaluate and rank applications in accordance with § 1940.956 of this subpart.

(3) Preparation of a proposed budget that includes 3 years projections of income and expenses associated with panel operations. If funds from other sources are anticipated, sources and amounts should be identified.

(4) Development of a financial management system that will provide for effective control and accountability of all funds and assets associated with the panel.

(5) A schedule to coordinate the submission, review, and ranking process of preapplications/applications in accordance with § 1940.956(a) of this subpart.

(6) Other information provided by the State in support of its application.

(b) *Selecting States.* The Under Secretary will review the application and other information submitted by the State and designate not more than five States to participate during any established time period.

(c) *Notification of selection.* (1) The Under Secretary will notify the Governor of each State whether or not the State has been selected for further consideration in this program. If a State has been selected, the notification will include the additional information that the Governor must submit to the Under Secretary in order for the State to meet eligibility requirements in accordance with paragraph (d) of this section.

(2) A copy of the notification to the Governor will be submitted to the Administrator along with a copy of the State's application and other material submitted in support of the application.

(d) *Determining State eligibility.* (1) The Governor will provide the Under Secretary with evidence that the State has complied with the eligibility requirements of paragraph (a)(2) of this section not later than September 1, 1992, for the first established time period and not later than September 1 for each of the remaining established time periods.

(2) The Under Secretary will review the material submitted by the Governor in sufficient detail to determine if a State has complied with all eligibility requirements of this subpart. The panel will not begin reviewing and ranking applications until the Governor has been notified in writing by the Under Secretary that the State has been determined eligible and is designated to participate in this program. A copy of the notification will be sent to the Administrator. The Under Secretary's decision is not appealable.

(e) *Eligibility requirements.* (1) With respect to this subpart, the Under

Secretary may determine a State to be an eligible State provided all of the following apply not later than October 1 of each FY:

(i) The State has established a rural economic development review panel that meets the requirements of § 1940.956 of this subpart;

(ii) The Governor has appointed an officer or employee of the State government to serve as State coordinator to carry out the responsibilities set forth in § 1940.957 of this subpart; and

(iii) The Governor has designated an agency of the State government to provide the panel and State coordinator with support for the daily operation of the panel.

(2) If a State is determined eligible initially and desires to participate in additional time periods established for this program, the Governor will submit documents and information not later than September 1 of each subsequent FY in sufficient detail for the Under Secretary to determine, prior to the beginning of the additional time period, that the State is still in compliance with all eligibility requirements of this subpart.

§ 1940.955 Distribution of program funds to designated States.

(a) States selected to participate in the first established time period will receive funds from designated rural development programs according to applicable program regulations until the end of FY 1992, if necessary for States to have sufficient time to meet the eligibility requirements of this subpart, and to be designated to participate in this program. No funds will be administered under this subpart to an ineligible State.

(b) If a State becomes an eligible State any time prior to the end of FY 1992, any funds remaining unobligated from a State's FY 1992 allocation, may be administered under this subpart.

(c) Beginning in FY 1993 and for each established time period thereafter, all designated rural development program funds received by a designated State will be administered in accordance with §§ 1940.961 through 1940.965 of this subpart, provided the State is determined eligible prior to the beginning of each FY in accordance with § 1940.954 of this subpart. No assistance will be provided under any designated rural development program in any designated State that is not an eligible State.

§ 1940.956 State rural economic development review panel.

(a) *General.* In order for a State to become or remain an eligible State, the State must have a rural economic development panel that meets all requirements of this subpart. Each designated State will establish a schedule whereby the panel and FmHA will coordinate the submission, review, and ranking process of preapplications/applications. The schedule will be submitted to the Under Secretary for concurrence and should consider the following:

(1) Timeframes should assure that applications selected for funding from the current FY's allocation of funds can be processed by FmHA and funds obligated prior to the July 15 pooling established in § 1940.961(c) of this subpart;

(2) Initial submission of preapplications/applications from FmHA to the panel and any subsequent submissions during the first year;

(3) How often during each FY thereafter should FmHA submit preapplications/applications to the panel for review and ranking;

(4) Number of working days needed by the panel to review and rank preapplications/applications;

(5) Number of times during the FY the panel will submit a list of ranked preapplications/applications to FmHA for funding consideration;

(6) Consider the matching of available loan and grant funds to assure that all allocated funds will be used;

(7) How to consider ranked preapplications/applications at the end of the FY that have not been funded; and

(8) How to consider requests for additional funds needed by an applicant to complete a project that already has funds approved; i.e., construction bid cost overrun.

(b) *Duties and responsibilities.* The panel is required to advise the State Director on the desirability of funding applications from funds available to the State from designated rural development programs. In relation to this advice, the panel will have the following duties and responsibilities:

(1) *Establish policy and criteria to review and evaluate area plans and to review and rank preapplications/applications.*

(i) *Area plan.* The panel will develop a written policy and criteria to use when evaluating area plans. The criteria to be used when evaluating area plans will assure that the plan includes, as a minimum, the technical information included in § 1940.959 of this subpart. The criteria will be in sufficient detail for the panel to determine that the plan is technically and economically adequate, feasible, and likely to succeed in meeting the stated goals of the plan. The panel will give weight to area-wide or regional plans and comments submitted by intergovernmental development councils or similar organizations made up of local elected officials charged with the responsibility for rural area or regional development. A copy of the policy and evaluating criteria will be provided to FmHA.

(ii) *Applications.* The panel will annually review the policy and criteria used by the panel to evaluate and rank preapplications/applications in accordance with this subpart. The panel will assure that the policy and criteria are consistent with current rural development needs, and that the public has an opportunity to provide input during the development of the initial policy and criteria. The Governor will provide a copy of the initial policy and criteria established by the panel when submitting evidence of eligibility in accordance with § 1940.954 of this subpart. Annually, thereafter, and not later than September 1 of each FY, the State coordinator will send the Under Secretary evidence that the panel has reviewed the established policy and criteria. The State coordinator will also send the Under Secretary a copy of all revisions.

(A) The policy and criteria used to rank applications for business related projects will include the following, which are not necessarily in rank order:

(*1*) The extent to which a project stimulate rural development by creating new jobs of a permanent nature or retaining existing jobs by enabling new small businesses to be started, or existing businesses to be expanded by local or regional area residents who own and operate the businesses.

(*2*) The extent to which a project will contribute to the enhancement and the diversification of the local or regional area economy.

(*3*) The extent to which a project will generate or retain jobs for local or regional area residents.

(*4*) The extent to which a project will be carried out by persons with sufficient management capabilities.

(*5*) The extent to which a project is likely to become successful.

(*6*) The extent to which a project will assist a local or regional area overcome severe economic distress.

(*7*) The distribution of assistance to projects in as many areas as possible in the State with sensitivity to geographic distribution.

(8) The technical aspects of the project.

(9) The market potential and marketing arrangement for the projects.

(10) The potential of such project to promote the growth of a rural community by improving the ability of the community to increase the number of persons residing in the community and by improving the quality of life for these persons.

(B) The policy and criteria used to rank preapplications/applications for infrastructure and all other community facility-type projects will include the following which are not necessarily in rank order:

(1) The extent to which the project will have the potential to promote the growth of a rural community by improving the quality of life for local or regional residents.

(2) The extent to which the project will affect the health and safety of local or regional area residents.

(3) The extent to which the project will improve or enhance cultural activities, public service, education, or transportation.

(4) The extent to which the project will affect business productivity and efficiency.

(5) The extent to which the project will enhance commercial business activity.

(6) The extent to which the project will address a severe loss or lack of water quality or quantity.

(7) The extent to which the project will correct a waste collection or disposal problem.

(8) The extent to which the project will bring a community into compliance with Federal or State water or waste water standards.

(9) The extent to which the project will consolidate water and waste systems and utilize management efficiencies in the new system.

(2) *Review and evaluate area plans.* Each area plan submitted for a local or regional area will be reviewed and evaluated by the panel. After an area plan has been reviewed and evaluated in accordance with established policy and criteria:

(i) The panel will accept any area plan that meets established criteria unless the plan is incompatible with any other area plan for that area that has been accepted by the panel; or

(ii) The panel will return any area plan that is technically or economically inadequate, not feasible, is unlikely to be successful, or is not compatible with other panel-accepted area plans for that area. When an area plan is returned, the panel will include an explanation of the reasons for the return and suggest alternative proposals.

(iii) The State coordinator will notify the State Director, in writing, of the panel's decision on each area plan reviewed.

(3) *Review and rank preapplications/applications.* The panel will review, rank, and transmit a ranked list of preapplications/applications according to the schedule prepared in accordance with paragraph (a) of this section, and the following:

(i) *Review preapplications/applications.* The panel will review each preapplication/application for assistance to determine if the project to be carried out is compatible with the area plan in which the project described in the preapplication/application is proposed, and either:

(A) Accept any preapplication/application determined to be compatible with such area plan; or

(B) Return to the State Director any preapplication/application determined not to be compatible with such area plan. The panel will notify the applicant when preapplication/applications are returned to the State Director.

(ii) *Rank preapplications/applications.* The panel will rank only those preapplications/applications that have been accepted in accordance with paragraph (b)(3)(i)(A) of this section. The panel will consider the sources of assistance and related activities in the State identified by the designated agency. Applications will be ranked in accordance with the written policy and criteria established in accordance with paragraph (b)(1)(ii) of this section and the following:

(A) Priority ranking for projects addressing health emergencies. In addition to the criteria established in paragraph (b)(1)(ii) of this section, preapplications/applications for projects designed to address a health emergency declared so by the appropriate Federal or State agency, will be given priority by the panel.

(B) Priority based on need. If two or more preapplications/applications ranked in accordance with this subpart are determined to have comparable strengths in their feasibility and potential for growth, the panel will give priority to the applications for projects with the greatest need.

(C) If additional ranking criteria for use by a panel are required in any designated rural development program regulation, the panel will give consideration to the criteria when ranking preapplications/applications submitted under that program.

(iii) *Transmit list of ranked preapplications/applications.* After the preapplications/applications have been ranked, the panel will submit a list of all preapplications/applications received to the State coordinator. The list will clearly indicate each preapplication/application accepted for funding and will list preapplications/applications in the order established for funding according to priority ranking by the panel. The list will not include a preapplication/application that is to be returned to the applicant in accordance with paragraph (b)(3)(i)(B) of this section. The State coordinator will send a copy of the list to the State Director for further processing of the preapplication/application in accordance with § 1940.965 of this subpart. Once the panel has ranked and submitted the list to FmHA and the State Director has selected a preapplication/application for funding, the preapplication/application selected will not be replaced with a preapplication/application received at a later date that may have a higher ranking.

(4) *Public availability of list.* If requested, the State coordinator will make the list of ranked preapplications/applications available to the public and will include a brief explanation and justification of why the project preapplications/applications received their priority ranking.

(c) *Membership.* (1) *Voting members.* The panel will be composed of not more than 16 voting members who are representatives of rural areas. The 16 voting members will include the following:

(i) One of whom is the Governor of the State or the person designated by the Governor to serve on the panel, on behalf of the Governor, for that year;

(ii) One of whom is the director of the State agency responsible for economic and community development or the person designated by the director to serve on the panel, on behalf of the director, for that year;

(iii) One of whom is appointed by a statewide association of banking organizations;

(iv) One of whom is appointed by a statewide association of investor-owned utilities;

(v) One of whom is appointed by a statewide association of rural telephone cooperatives;

(vi) One of whom is appointed by a statewide association of noncooperative telephone companies;

(vii) One of whom is appointed by a statewide association of rural electric cooperatives;

(viii) One of whom is appointed by a statewide association of health care organizations;

(ix) One of whom is appointed by a statewide association of existing local government-based planning and development organizations;

(x) One of whom is appointed by the Governor of the State from either a statewide rural development organization or a statewide association of publicly-owned electric utilities, neither of which is described in any of paragraphs (c)(1)(iii) through (ix);

(xi) One of whom is appointed by a statewide association of counties;

(xii) One of whom is appointed by a statewide association of towns and townships, or by a statewide association of municipal leagues, as determined by the Governor;

(xiii) One of whom is appointed by a statewide association of rural water districts;

(xiv) The State director of the Federal small business development center or, if there is no small business development center in place with respect to the State, the director of the State office of the Small Business Administration;

(xv) The State representative of the Economic Development Administration of the Department of Commerce; and

(xvi) One of whom is appointed by the State Director from among the officers and employees of FmHA.

(2) *Nonvoting members.* The panel will have not more than four nonvoting members who will serve in an advisory capacity and who are representatives of rural areas. The four nonvoting members will be appointed by the Governor and include:

(i) One from names submitted by the dean or the equivalent official of each school or college of business, from colleges and universities in the State;

(ii) One from names submitted by the dean or the equivalent official of each school or college of engineering, from colleges and universities in the State;

(iii) One from names submitted by the dean or the equivalent official, of each school or college of agriculture, from colleges and universities in the State; and

(iv) The director of the State agency responsible for extension services in the State.

(3) *Qualifications of panel members appointed by the Governor.* Each individual appointed to the panel by the Governor will be specially qualified to serve on the panel by virtue of the individual's technical expertise in business and community development.

(4) *Notification of selection.* Each statewide organization that selects an individual to represent the organization on the panel must notify the Governor of the selection.

(5) *Appointment of members representative of statewide organization in certain cases.*

(i) If there is no statewide association or organization of the entities described in paragraph (c)(1) of this section, the Governor of the State will appoint an individual to fill the position or positions, as the case may be, from among nominations submitted by local groups of such entities.

(ii) If a State has more than one of any of the statewide associations or organizations of the entities described in paragraph (c)(1) of this section, the Governor will select one of the like organizations to name a member to serve during no more than one established time period. Thereafter, the Governor will rotate selection from among the remaining like organizations to name a member.

(d) *Failure to appoint panel members.* The failure of the Governor, a Federal agency, or an association or organization described in paragraph (c) of this section, to appoint a member to the panel as required under this subpart, shall not prevent a State from being determined an eligible State.

(e) *Panel vacancies.* A vacancy on the panel will be filled in the manner in which the original appointment was made. Vacancies should be filled prior to the third panel meeting held after the vacany occurred. The State coordinator will notify the State Director, in writing, when the vacancy is filled or if the vacancy will not be filled.

(f) *Chairperson and vice chairperson.* The panel will select two members of the panel who are not officers or employees of the United States to serve as the chairperson and vice chairperson of the panel. The term shall be for 1 year.

(g) *Compensation to panel members.* (1) *Federal members.* Except as provided in § 1940.960 of this subpart, each member of the panel who is an officer or employee of the Federal Government may not receive any compensation or benefits by reason of service on the panel, in addition to that which is received for performance of such officer or employee's regular employment.

(2) *NonFederal members.* Each nonfederal member may be compensated by the State and/or from grant funds established in § 1940.968 of this subpart.

(h) *Rules governing panel meetings.* (1) *Quorum.* A majority of voting members of the panel will constitute a quorum for the purpose of conducting business of the panel.

(2) *Frequency of meetings.* The panel will meet not less frequently than quarterly. Frequency of meetings should be often enough to assure that applications are reviewed and ranked for funding in a timely manner.

(3) *First meeting.* The State coordinator will schedule the first panel meeting and will notify all panel members of the location, date, and time at least seven days prior to the meeting. Subsequent meetings will be scheduled by vote of the panel.

(4) *Records of meetings.* The panel will keep records of the minutes of the meetings, deliberations, and evaluations of the panel in sufficient detail to enable the panel to provide interested agencies or persons the reasons for its actions.

(i) *Federal Advisory Committee Act.* The Federal Advisory Committee Act shall not apply to any State rural economic development review panel.

(j) *Liability of members.* The members of a State rural economic development review panel shall not be liable to any person with respect to any determination made by the panel.

§ 1940.957 State coordinator.

The Governor will appoint an officer or employee of State government as State coordinator in order for a State to become and remain an eligible State under this subpart. The State coordinator will have the following duties and responsibilities:

(a) Manage, operate, and carry out the instructions of the panel;

(b) Serve as liaison between the panel and the Federal and State agencies involved in rural development;

(c) Coordinate the efforts of interested rural residents with the panel and ensure that all rural residents in the State are informed about the manner in which assistance under designated rural development programs is provided to the State pursuant to this subpart, and if requested, provide information to State residents; and

(d) Coordinate panel activities with FmHA.

§ 1940.958 Designated agency.

The Governor will appoint a State agency to provide the panel and the State coordinator with support for the daily operation of the panel. In addition to providing support, the designated agency is responsible for identifying:

(a) Alternative sources of financial assistance for project preapplications/applications reviewed and ranked by the panel, and

(b) Related activities within the State.

§ 1940.959 Area plan.

Each area plan submitted to the panel for review in accordance with § 1940.956 of this subpart shall identify the geographic boundaries of the area and shall include the following information:

(a) An overall development plan for the area with goals, including business development and infrastructure development goals, and time lines based on a realistic assessment of the area, including, but not limited to, the following:

(1) The number and types of businesses in the area that are growing or declining;

(2) A list of the types of businesses that the area could potentially support;

(3) The outstanding need for water and waste disposal and other public services or facilities in the area;

(4) The realistic possibilities for industrial recruitment in the area;

(5) The potential for development of tourism in the area;

(6) The potential to generate employment in the area through creation of small businesses and the expansion of existing businesses; and

(7) The potential to produce value-added agricultural products in the area.

(b) An inventory and assessment of the human resources of the area, including, but not limited to, the following:

(1) A current list of organizations in the area and their special interests;

(2) The current level of participation of area residents in rural development activities and the level of participation required for successful implementation of the plan;

(3) The availability of general and specialized job training in the area and the extent to which the training needs of the area are not being met;

(4) A list of area residents with special skills which could be useful in developing and implementing the plan; and

(5) An analysis of the human needs of the area, the resources in the area available to meet those needs, and the manner in which the plan, if implemented, would increase the resources available to meet those needs.

(c) The current degree of intergovernmental cooperation in the area and the degree of such cooperation needed for the successful implementation of the plan.

(d) The ability and willingness of governments and citizens in the area to become involved in developing and implementing the plan.

(e) A description of how the governments in the area apply budget and fiscal control processes to the plan. This process is directed toward costs associated with carrying out the planned development. When plans are developed, the financial condition of all areas covered under the plan should be fully recognized and planned development should realistically reflect the area's immediate and long-range financial capabilities.

(f) The extent to which public services and facilities need to be improved to achieve the economic development and quality of life goals of the plan. At a minimum, the following items will be considered:

(1) Law enforcement;

(2) Fire protection;

(3) Water, sewer, and solid waste management;

(4) Education;

(5) Health care;

(6) Transportation;

(7) Housing;

(8) Communications; and

(9) The availability of and capability to generate electric power.

(g) Existing area or regional plans are acceptable provided the plan includes statements that indicate the degree to which the plan has met or is meeting all the requirements in paragraphs (a) through (f) of this section.

§ 1940.960 Federal employee panel members.

(a) The State Director will appoint one FmHA employee to serve as a voting member of the panel established in § 1940.956(c)(1) of this subpart.

(b) The Administrator may appoint, temporarily and for specific purposes, personnel from any department or agency of the Federal Government as nonvoting panel members, with the consent of the head of such department or agency, to provide official information to the panel. The member(s) appointed shall have expertise to perform a duty described in § 1940.956(b) of this subpart that is not available among panel members.

(c) Federal panel members will be paid per diem or otherwise reimbursed by the Federal Government for expenses incurred each day the employee is engaged in the actual performance of a duty of the panel. Reimbursement will be in accordance with Federal travel regulations.

§ 1940.961 Allocation of appropriated funds.

(a) *Initial allocations.* (1) Each FY, from sums appropriated for direct loans, loan guarantees, or grants for any designated rural development program, funds will be allocated to designated States in accordance with FmHA Instruction subpart L of part 1940, Exhibit A, Attachment 4, of this chapter (available in any FmHA State or District Office).

(2) Each FY, and normally within 30 days after the date FmHA receives an appropriation of designated rural development program funds, the Governor of each designated State will be notified of the amounts allocated to the State under each designated program for such FY. The Governor will also be notified of the total amounts appropriated for the FY for each designated rural development program.

(3) The State Director will fund projects from a designated State's allocation of funds, according to appropriate program regulations giving great weight to the order in which the preapplications/applications for projects are ranked and listed by the panel in accordance with § 1940.956(b)(3) of this subpart.

(b) *Reserve.* A percentage of the National Office reserve established in subpart L of part 1940 of this chapter will be used to establish a reserve for designated States that is separate and apart from that of nondesignated States. The percent reserved will be based upon the same criteria used in subpart L of part 1940 of this chapter to allocate program funds.

(c) *Pooling.* (1) On July 15 of each FY, and from time to time thereafter during the FY, as determined appropriate, unobligated funds will be pooled from among the designated States. Pooled funds will be made a part of the reserve established for designated States and will revert to National Office control.

(2) Funds pooled from designated States can be requested by designated States, pursuant to subsection (d) of this section. The designated States' pool; however, will not be available to nondesignated States until September 1 of each year.

(d) *Request for funds.* (1) Designated States may request designated States' reserve funds, and funds for other designated rural development programs controlled by the National Office, as shown in FmHA Instruction subpart L of part 1940, Exhibit A, Attachment 4, of this chapter, in accordance with applicable program regulations.

(2) Designated States may request funds from the nondesignated reserve account when:

(i) All allocated and reserve funds to designated states have been used, or

(ii) Sufficient funds do not remain in any designated State allocation and in the designated States' reserve account to fund a project.

§ 1940.962 Authority to transfer direct loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for direct Water and Waste Disposal or Community Facility loans for a FY are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.*

(1) Amounts transferred within a designated State. The amount of direct loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(2) Amounts transferred on a National basis. The amount of direct loan funds transferred in a FY, among the designated States, from a program under this subpart (after accounting for any offsetting transfers into such program) shall not exceed $9 million, or an amount otherwise authorized by law.

(c) *National Office concurrence.* The State Director may transfer direct loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.963 Authority to transfer guaranteed loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for guaranteed Water and Waste Disposal, Community Facility, or Business and Industry loans for a FY are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.* The amount of guaranteed loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(c) *National Office concurrence.* The State Director may transfer guaranteed loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.964 [Reserved]

§ 1940.965 Processing project preapplication/applications.

Except for the project review and ranking process established in this subpart, all requests for funds from designated rural development programs will be processed, closed, and serviced according to applicable FmHA regulations, available in any FmHA office.

(a) *Preapplications/applications.* All preapplications/applications on hand that have not been selected for further processing will be submitted initially to the panel for review and ranking. Preapplications/applications on hand that had been selected for further processing prior to the time a State was selected to participate in this program may be funded by FmHA without review by the panel. Preapplications/applications selected for further processing by FmHA will not exceed the State's previous year's funding level. The State Director will provide the State coordinator a list of preapplications/applications that are in process and will be considered for funding without review by the panel. This list will be provided at the same time preapplications/applications are initially submitted to the State coordinator in accordance with paragraph (d) of this section.

(b) *FmHA review.* Preapplications/applications will be reviewed in sufficient detail to determine eligibility and, if applicable, determine if the applicant is able to obtain credit from other sources at reasonable rates and terms. Normally, within 45 days after receiving a complete preapplication/application, FmHA will notify the applicant of the eligibility determination. A copy of all notifications will be sent to the State coordinator.

(c) *Applicant notification.* The notification to eligible applicants will contain the following statements:

Your application has been submitted to the State coordinator for review and ranking by the State rural economic development review panel. If you have questions regarding this review process, you should contact the State coordinator. The address and telephone number are: (insert).

You will be notified at a later date of the decision reached by the panel and whether or not you can proceed with the proposed project.

You are advised against incurring obligations which cannot be fulfilled without FmHA funds.

These statements should be included in notifications to applicants with preapplications/applications on hand that had not been selected for further processing prior to the time a State was selected to participate in this program.

(d) *Information to State coordinator.* FmHA will forward a copy of the preapplication/application and other information received from the applicant to the State coordinator according to a schedule prepared in accordance with § 1940.956(a) of this subpart. The State coordinator will be advised that no further action will be taken on preapplications/applications until they have been received and ranked by the panel, and a priority funding list has been received from the State. Applications forwarded to the State coordinator will be reviewed and ranked for funding in accordance with § 1940.956 of this subpart.

(e) *The FmHA review of priority funding list.* FmHA will review the list of ranked applications received from the State coordinator and determine if projects meet the requirements of the designated rural development program under which the applicant seeks assistance. Any project that does not meet program regulations will be removed from the list. Applicants will be notified of the decision reached by the panel and whether or not the applicant should proceed with the project. FmHA will provide a copy of all notifications to the State coordinator. The decisions of the panel are not appealable.

(f) *Obligation of funds.* FmHA will provide funds for projects whose application remains on the list, subject to available funds. Consideration will be given to the order in which the applications were ranked and prioritized by the panel. If FmHA proposes to provide assistance to any project without providing assistance to all projects ranked higher in priority by the panel than the project to be funded, 10 days prior to requesting an obligation of funds, the State Director will submit a report stating reasons for funding such lower ranked project to the following:

(1) *Panel.*

(2) *National Office.* The National Office will submit a copy of the notification to:

(i) Committee on Agriculture of the House of Representatives, Washington, DC.

(ii) Committee on Agriculture, Nutrition, and Forestry of the Senate, Washington, DC.

§§ 1940.966–1940.967 [Reserved]

§ 1940.968 Rural Economic Development Review Panel Grant (Panel Grant).

(a) *General.* Panel Grants awarded will be made from amounts

appropriated for grants under any provision of Section 306(a) of the CONACT (7 U.S.C 1926(a)), not to exceed $100,000 annually to each eligible State. This section outlines FmHA's policies and authorizations and sets forth procedures for making grants to designated States for administrative costs associated with a State rural economic development review panel.

(b) *Objective.* The objective of the Panel Grant program is to make grant funds available annually to each designated State to use for administrative costs associated with the State rural economic development review panels meeting requirements of § 1940.956 of this subpart.

(c) *Authorities, delegations, and redelegations.* The State Director is responsible for implementing the authorities in this section and to issue State supplements redelegating these authorities to appropriate FmHA employees. Grant approval authorities are contained in subpart A of part 1901 of this chapter.

(d) *Joint funds.* FmHA grant funds may be used jointly with funds furnished by the grantee or grants from other sources.

(e) *Eligibility.* A State designated by the Under Secretary to participate in this program is eligible to receive not more than $100,000 annually under this section. A State must become and remain an eligible State in order to receive funds under this section.

(f) *Purpose.* Panel Grant funds may be used to pay for reasonable administrative costs associated with the panel, including, but not limited to, the following:

(1) Travel and lodging expenses;

(2) Salaries for State coordinator and support staff;

(3) Reasonable fees and charges for professional services necessary for establishing or organizing the panel. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations;

(4) Office supplies, and

(5) Other costs that may be necessary for panel operations.

(g) *Limitations.* Grant funds will not be used to:

(1) Pay costs incurred prior to the effective date of the grant authorized under this subpart;

(2) Recruit preapplications/applications for any designated rural development loan or grant program or any loan or grant program;

(3) Duplicate activities associated with normal execution of any panel member's occupation;

(4) Fund political activities;

(5) Pay costs associated with preparing area development plans;

(6) Pay for capital assets; purchase real estate, equipment or vehicles; rent, improve, or renovate office space; or repair and maintain State or privately owned property;

(7) Pay salaries to panel members; or

(8) Pay per diem or otherwise reimburse panel members unless distance traveled exceed 50 miles.

(h) *Other considerations.* (1) *Equal opportunity requirements.* Grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 as outlined in subpart E of part 1901 of this chapter.

(2) *Environmental requirements.* The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants made under this subpart.

(3) *Management assistance.* Grantees will be provided management assistance as necessary to assure that grant funds are used for eligible purposes for the successful operation of the panel. Grants made under this subpart will be administered under and are subject to the U.S. Department of Agriculture regulations, 7 CFR, parts 3016 and 3017, as appropriate.

(4) *Drug-free work place.* The State must provide for a drug-free workplace in accordance with the requirements of FmHA Instruction 1940–M (available in any FmHA office). Just prior to grant approval, the State must prepare and sign Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals."

(i) *Application processing.* (1) The State Director shall assist the State in application assembly and processing. Processing requirements should be discussed during an application conference.

(2) After the Governor has been notified that the State has been designated to participate in this program and the State has met all eligibility requirements of this subpart, the State may file an original and one copy of SF 424.1 with the State Director. The following information will be included with the application:

(i) State's financial or in-kind resources, if applicable, that will maximize the use of Panel Grant funds;

(ii) Proposed budget. The financial budget that is part of SF 424.1 may be used, if sufficient, for all panel income and expense categories;

(iii) Estimated breakdown of costs, including costs to be funded by the grantee or from other sources;

(iv) Financial management system in place or proposed. The system will account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State must be sufficient to permit preparation of reports required by Federal regulations and permit the tracing of funds to a level of expenditures adequate to establish that grant funds are used solely for authorized purposes;

(v) Method to evaluate panel activities and determine if objectives are met;

(vi) Proposed Scope-of-Work detailing activities associated with the panel and time frames for completion of each task, and

(vii) Other information that may be needed by FmHA to make a grant award determination.

(3) The applicable provisions of § 1942.5 of subpart A of part 1942 of this chapter relating to preparation of loan dockets will be followed in preparing grant dockets. The docket will include at least the following:

(i) Form FmHA 400–4, "Assurance Agreement;"

(ii) Scope-of-work prepared by the applicant and approved by FmHA;

(iii) Form FmHA 1940–1, "Request for Obligation of Funds," with Exhibit A, and

(iv) Certification regarding a drug-free workplace in accordance with FmHA Instruction 1940–M (available in any FmHA office).

(j) *Grant approval, obligation of funds, and grant closing.*

(1) The State Director will review the application and other documents to determine whether the proposal complies with this subpart.

(2) Exhibit A (available from any FmHA State Office), shall be attached to and become a permanent part of Form FmHA 1940–A and the following paragraphs will appear in the comment section of that form:

> The Grantee understands the requirements for receipt of funds under the Panel Grant program. The Grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in FmHA 7 CFR, part 1940, subpart T, and 7 CFR, parts 3016 and 3017, including revisions through _____ (date of grant approval). The Grantee further agrees to use grant funds for the purposes outlined in the Scope-of-Work approved by FmHA. Exhibit A is incorporated as a part hereof.

(3) Grants will be approved and obligated in accordance with the applicable parts of § 1942.5(d) of subpart A of part 1942 of this chapter.

(4) An executed copy of the Scope-of-Work will be sent to the State

coordinator on the obligation date, along with a copy of Form FmHA 1940–1 and the required exhibit. FmHA will retain the original of Form FmHA 1940–1 and the exhibit.

(5) Grants will be closed in accordance with the applicable parts of Subpart A of Part 1942 of this chapter, including § 1942.7. The grant is considered closed on the obligation date.

(6) A copy of Form FmHA 1940–1, with the required exhibit, and the Scope-of-Work will be submitted to the National Office when funds are obligated.

(7) If the grant is not approved, the State coordinator will be notified in writing of the reason(s) for rejection. The notification will state that a review of the decision by FmHA may be requested by the State under subpart B of part 1900 of this chapter.

(k) *Fund disbursement.* Grant funds will be disbursed on a reimbursement basis. Requests for funds should not exceed one advance every 30 days. The financial management system of the State shall provide for effective control and accountability of all funds, property, and assets.

(1) SF 270, "Request for Advance or Reimbursement," will be completed by the State coordinator and submitted to the State Director not more frequently than monthly.

(2) Upon receipt of a properly completed SF 270, the State Director will request funds through the Automated Discrepancy Processing System. Ordinarily, payment will be made within 30 days after receipt of a properly prepared request for reimbursement.

(3) States are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprises, Department of Commerce, Washington, DC 20230.

(l) *Title.* Title to supplies acquired under this grant will vest, upon acquisition, in the State. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the grant awarded, and if the supplies are not needed for any other federally sponsored programs, the State shall compensate FmHA for its share.

(m) *Costs.* Costs incurred under this grant program are subject to cost principles established in Office of Management and Budget Circular A–87.

(n) *Budget changes.* Rebudgeting within the approval direct cost categories to meet unanticipated requirements which do not exceed 10 percent of the current total approved budget shall be permitted. The State shall obtain prior approval from the State Director for any revisions which result in the need for additional funding.

(o) *Programmatic changes.* The State shall obtain prior written approval from the State Director for any change to the scope or objectives for which the grant was approved or for contracting out or otherwise obtaining services of a third party to perform activities which are central to the purposes of the grant. Failure to obtain prior approval of changes to the scope can result in suspension or termination of grant funds.

(p) *Financial reporting.* SF 269, "Financial Status Report," and a Project Performance Report are required on a quarterly basis. The reports will be submitted to the State Director not later than 30 days after the end of each quarter. A final SF 269 and Project Performance Report shall be due 90 days after the expiration or termination of grant support. The final report may serve as the last quarterly report. The State coordinator will constantly monitor performance to ensure that time schedules are met, projected work by time periods is accomplished, and other performance objectives are achieved. Program outlays and income will be reported on an accrual basis. Project Performance Reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will affect the ability to meet the objectives of the grant during established time periods. This disclosure must include a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(q) *Audit requirements.* Audit reports will be prepared and submitted in accordance with § 1942.17(q)(4) of subpart A of part 1942 of this chapter. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards using publication, "Standards for Audits of Governmental Organizations, Programs, Activities and Functions."

(r) *Grant cancellation.* Grants which have been approved and funds obligated may be cancelled by the grant approval official in accordance with § 1942.12 of subpart A of part 1942 of this chapter. The State Director will notify the State coordinator that the grant has been cancelled.

(s) *Grant servicing.* Grants will be serviced in accordance with subparts E and O of part 1951 of this chapter.

(t) *Subsequent grants.* Subsequent grants will be processed in accordance with the requirements of this subpart for each additional time period a State is designated to participate in this program.

§ 1940.969 Forms, exhibits, and subparts.

Forms, exhibits, and subparts of this chapter (all available in any FmHA office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

§ 1940.970 [Reserved]

§ 1940.971 Delegation of authority.

The authority authorized to the State Director in this subpart may be redelegated.

§§ 1940.972–1940.999 [Reserved]

§ 1940.1000 OMB control number.

The collection of information requirements contained in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575–0145. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response with an average of 4 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 aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 1951—SERVICING AND COLLECTIONS

6. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

7. Section 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the Farmers Home Administration's (FmHA) policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Industrial Development grants; loans for grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; and System for Delivery of Certain Rural Development Programs panel grant. Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

Dated: February 7, 1992.

Michael M. F. Liu,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 92-7706 Filed 4-3-92; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

8 CFR Parts 3, 103, 242, and 292

[AG Order No. 1579-92]

Executive Office for Immigration Review; Rules of Procedures

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the rules of administrative procedure that are followed in all matters before Immigration Judges, the regulations governing deportation proceedings, and the rules governing disciplinary proceedings against attorneys and representatives. These regulatory changes are promulgated to implement the following sections of the Immigration Act of 1990, Public Law 101-649 (IMMACT): Section 504 regarding custody and bond determinations for aggravated felons; section 545 concerning notice requirements, eligibility for certain relief from deportation, and dissiplimary proceedings for frivolous behavior of attorneys and representatives; and, section 701 concerning the confidentiality of information regarding a battered spouse or child in proceedings. Additional changes to the rules of procedure have been made to reflect the experience and observations of practice under the current rules, and to further assist in the fair and proper resolution of issues before the Immigration Judges. To achieve these ends, certain portions of existing rules have been amended or deleted, and several new provisions have been added. Many of the rules have been renumbered as a result of these changes.

The rules of procedure are interrelated. Unless specifically noted to the contrary, each rule of procedure should be construed harmoniously with existing regulations under this chapter.

DATES: This interim rule is effective April 6, 1992, except for §§ 3.15 and 3.26 which will be effective June 13, 1992. Written comments must be received on or before May 6, 1992.

ADDRESSES: Please submit written comments to: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305-0470.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305-0470.

SUPPLEMENTARY INFORMATION: These changes to the current rules of practice before the Immigration Judges, and to regulations governing deportation proceedings and disciplinary proceedings against attorneys and representatives, have been promulgated as a result of IMMACT. Title V of IMMACT mandates changes in deportation and exclusion proceedings with regard to criminal aliens. Regulations concerning custody and bond determinations have been amended to implement section 504 with regard to aggravated felons. Pursuant to section 545, regulations have been added to provide for sanctions against attorneys or accredited representatives who engage in frivolous behavior in immigration proceedings and to require notice to aliens in deportation proceedings in accordance with specified procedures. Regulations protecting the confidentiality of information concerning an abused spouse or child in proceedings before an Immigration Judge have been included.

In addition, many other changes have been made to promote increased efficiency in operations, while responding to observations regarding more effective methods of case handling. The regulatory changes will improve and expedite the hearing process before Immigration Judges, while retaining all due process protections necessary for a fair hearing. Several of the changes reflect the need to ensure an adequate and correct address for the alien in proceedings to satisfy due process notice requirements, and allow for *in absentia* hearings when an alien who is provided with notice fails to appear.

Other changes have been added to reflect many current practices before Immigration Judges, including the use of minute orders and the requirement of specific language for the certification of foreign language translations. The amendments require that notice of any change of venue must be given to all parties. Further amendments to the rules clarify procedures for fee collection by the Service, and allow for documents to be filed with a fee receipt or application for fee waiver. Clarifications were made to existing rules to alleviate any confusion over when the decision of the Immigration Judge becomes final. Finally, minor language changes are included to correct or clarify common terminology used in the rules.

What follows is a section by section analysis of the proposed regulatory amendments:

8 CFR 3.1(d)(1-a) *Summary Dismissal of Appeals.* This rule provides for the summary dismissal of appeals for certain specified reasons. It also provides that attorneys or representatives who file such appeals may be found to have engaged in frivolous behavior within the scope of 8 CFR 292.

8 CFR 3.12 *Scope of Rules.* This rule expands the scope of the rules of procedure to include hearings regarding disciplinary proceedings under section 292 of this title.

8 CFR 3.14 *Jurisdiction and Commencement of Proceedings.* This section requires the Service to notify the respondent/applicant of the Office of the Immigration Judge in which the charging document has been filed.

8 CFR 3.15 *Contents of Order to Show Cause and Notification of Change of Address.* This new section clarifies and expands the information to be contained

in the Order to Show Cause. Inclusion of this information will add to a more efficient and accurate administrative handling of the case. The identifying information will be provided by the Service to assist in the administrative processing of cases by the Office of the Immigration Judge. This section is not intended to provide any substantive or procedural rights to the respondent in the event that information is omitted or incorrect.

8 CFR 3.16 (New Section Number). *Representation.* Section 3.15 is redesignated as § 3.16.

8 CFR 3.17 (New Section Number). *Appearances.* Section 3.16 is redesignated as § 3.17. It is also amended to require counsel for the respondent/applicant to serve a separate Notice of Appearance on the Service for any matter before the Immigration Judge, regardless of whether counsel has previously filed a Notice of Appearance with the Service for appearances before the Service.

8 CFR 3.18 (New Section Number). *Scheduling of cases.* Section 3.17 is redesignated as § 3.18.

8 CFR 3.19 (New Section Number). *Custody/Bond.* Section 3.18 is redesignated as § 3.19. It is also amended to implement section 504 of IMMACT, which prohibits release of aggravated felons on bond or other conditions. An exception is made for aliens lawfully admitted to the United States who are in deportation proceedings if certain stringent criteria are met. In addition, the regulation limits an alien to one bond redetermination unless changed circumstances occurring after the prior bond redetermination would warrant a new determination. Finally certain technical amendments have been introduced. The term "alien" has been changed to "respondent/applicant". Section 3.19(c)(2) amends the phrase "Immigration Judge Office" to "Office of the Immigration Judge". These minor language amendments reflect the correct terminology used in proceedings before the Immigration Judge. Section 3.19(g) establishes a procedure requiring the Service immediately to notify the Office of the Immigration Judge of any change in custody location, release of a detained alien, or subsequent taking of an alien into Service custody. Prompt notification of custody changes will allow the Office of the Immigration Judge to schedule cases more accurately and avoid unnecessary cancellation of hearings when an alien has been moved or released from custody.

8 CFR 3.20 (New Section Number). *Change of Venue.* Section 3.19 is redesignated as § 3.20. This section states that venue shall lie where the charging document is filed by the Service. A motion for a change of venue can be made by either party. Before a change of venue may be granted, certain address information must be provided to ensure proper notice of future hearings to the respondent/applicant.

8 CFR 3.21 (New Section Number). *Pre-hearing Conferences and Statement.* Section 3.20 is redesignated as § 3.21. This section states that the Immigration Judge can require certain information of either or both parties to assist in the presentation and ultimate decision of a case. It will provide the Immigration Judge with a specific mechanism to clarify issues, allow for more accurate time scheduling of cases, and generally simplify and organize the proceeding. In addition the rule allows the Immigration Judge to require evidentiary objections in writing prior to the hearing. Failure to respond will allow the Immigration Judge to admit the evidence described in the prehearing statement as unopposed. The ultimate decision as to admissibility, however, remains with the Immigration Judge.

8 CFR 3.22 (New Section Number). *Interpreters.* Section 3.21 is redesignated as § 3.22.

8 CFR 3.23 (New Section Number). *Motions.* Section 3.22 is redesignated as § 3.23.

8 CFR 3.24 (New Section Number). *Waiver of Fees in Immigration Judge Proceedings.* Section 3.23 is redesignated as § 3.24.

8 CFR 3.25 (New Section Number). *Waiver of presence of respondent/applicant.* Section 3.24 is redesignated as § 3.25.

8 CFR 3.26 (New Section Number). *In absentia hearings.* This new section expands the language of former § 3.24 dealing with *in absentia* hearings. It requires the Immigration Judge to proceed *in absentia* when an alien fails to appear at a hearing, provided that proper notice has been properly given to the alien. The address in the Record of Proceeding will have been provided by the alien. The Immigration Judge shall rely on that information to decide whether due notice has been given to the alien.

8 CFR 3.27 (New Section Number). *Public access to hearing.* Section 3.25 is redesignated as § 3.27. Hearings held pursuant to section 216(c)(4) of the Act will be closed to the public unless the abused alien spouse or abused child agrees to allow the hearing and the record of proceeding to be open. In the case of an abused child, the Immigration Judge may decide whether to allow the hearing and the Record of Proceeding to be open.

8 CFR 3.28 (New Section Number). *Recording equipment.* Section 3.26 is redesignated as § 3.28.

8 CFR 3.29 (New Section Number). *Continuances.* Section 3.27 is redesignated as § 3.29.

8 CFR 3.30 (New Section Number). *Additional charges in deportation hearings.* Section 3.28 is redesignated as § 3.30.

8 CFR 3.31 (New Section Number). *Filing documents and applications.* Section 3.29 is redesignated as § 3.31. The rule changes the standardized filing procedures for documents and applications with the Office of the Immigration Judge. All documents and applications requiring a fee must be accompanied either by a receipt from the Service, which will be collecting all fees relating to Immigration Judge proceedings, or an application for a fee waiver pursuant to § 3.24. It is anticipated that these changes will clarify the filing requirements and improve the efficient processing of applications before the Immigration Judge.

8 CFR 3.32 (New Section Number). *Service and size of documents.* Section 3.30 is redesignated as § 3.32. This rule requires parties to provide each other with copies of all documents to be presented to the Immigration Judge.

8 CFR 3.33 (New Section Number). *Translation of documents.* Section 3.31 is redesignated as § 3.33. This rule codifies standard language for the certification of translation that must accompany any foreign language document offered by a party in a proceeding.

8 CFR 3.34 (New Section Number). *Testimony.* Section 3.32 is redesignated as § 3.34.

8 CFR 3.35 (New Section Number). *Depositions.* Section 3.33 is redesignated as § 3.35.

8 CFR 3.36 (New Section Number). *Record of Proceeding.* Section 3.34 is redesignated as § 3.36.

8 CFR 3.37 (New Section Number). *Decisions.* Section 3.35 is redesignated as § 3.37. The rule makes minor changes to the practice regarding decisions rendered in Immigration Judge proceedings. The phrase "conclusion of the hearing" was omitted to allow for those occasions when a decision is rendered orally by the Immigration Judge at a time subsequent to the hearing. A new requirement that a memorandum of oral decision or "minute order" be prepared and served in every case has been added to reflect a widely used and popular practice.

8 CFR 3.38 (New Section Number). *Appeals.* Section 3.36 is redesignated as § 3.38.

8 CFR 3.39 (New Section Number). *Finality of decision.* Section 3.37 is redesignated as § 3.39. This minor language change clarifies when a decision of the Immigration Judge becomes final. This will prevent any confusion in fixing a time certain for a decision to be final.

8 CFR 3.40 (New Section Number). *Local Operating Procedures.* Section 3.38 is redesignated as § 3.40.

8 CFR 103.3 *Denials, Appeals and Precedent Decisions.* Paragraph (a)(1)(v) is added, providing that appeals shall be summarily dismissed if a party fails to specify the reasons for the appeal or if the appeal is frivolous, as defined in 8 CFR 292.3.

8 CFR 103.7 *Fees.* Paragraph (a) is revised to provide for the Service to accept any fee relating to an EOIR proceeding and provide a receipt for such payment. EOIR will accept the fee receipt as evidence that the required fee has been paid. It is anticipated that this procedure will improve overall efficiency in the processing of cases before EOIR.

8 CFR 242.2 *Authority of the Immigration Judge; Appeals.* Paragraph (d) has been modified by removing many of the references to procedures before the Immigration Judge. These references have been placed in part 3 of title 8 of the Code of Federal Regulations to improve clarity and to better organize the regulations dealing with procedures before the Immigration Judge into one section.

A new paragraph (h) has also been added: *Notification to Executive Office for Immigration Review of change in custody status.* This paragraph is to be read in conjunction with § 3.19(g) to require the Service affirmatively to advise EOIR of any change of location, or subsequent release, of a detained alien. As stated under § 3.19, this procedure will eliminate problems in scheduling hearings for aliens no longer in detention, and will provide for a more efficient and productive use of the Immigration Judge's schedule.

8 CFR 242.8 *Immigration Judges.* Paragraph (a) has been amended by adding a reference to the new statutory section relating to 242B proceedings.

8 CFR 292.3 *Discipline of Attorneys and Representatives.* This section is revised by changing the title from "Suspension and Disbarment" to the title listed above. The rule provides for sanctions against attorneys or representative who engage in frivolous behavior in immigration proceedings. The rule defines frivolous behavior, and sets forth the procedure for investigating, instituting charges, and holding a hearing on a complaint of frivolous behavior. Sanctions may include suspension, disbarment, or other appropriate action. In the case of Service attorneys, complaints shall be directed to the Office of Professional Responsibility of the Department of Justice.

These regulations implement many of the provisions of IMMACT regarding substantive and procedural changes in proceedings before Immigration Judges. Attention has focused on those sections of IMMACT that were effective upon enactment or shortly thereafter. In addition, an effort was made both to improve and to expedite the hearing process before Immigration Judges. The changes reflect the experience gained under the current rules, and seek to accommodate and implement the practices that have proven most effective in providing a fair hearing.

Implementation of this rule as an interim rule, with provision for post promulgation comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this interim rule are as follows: The statutory requirements upon which this rule is based became effective upon, or shortly after, enactment of IMMACT on November 29, 1990.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of EO 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

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

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., P. 1002.

2. Section 3.1 is amended by revising paragraph (d)(1-a) to read as follows:

§ 3.1 General Authorities.

* * * * *

(d) * * *

(1-a) *Summary dismissal of appeals.* (i) *Standards.* The Board may summarily dismiss any appeal or portion of any appeal in any case in which:

(A) the party concerned fails to specify the reasons for the appeal on Form EOIR–26 or Form EOIR 29 (Notices of Appeal) or other document filed therewith;

(B) the only reason for the appeal specified by the party concerned involves a finding of fact or a conclusion of law that was conceded by that party at a prior proceeding;

(C) the appeal is from an order that granted the party concerned the relief that had been requested;

(D) the Board is satisfied, from a review of the record, that the appeal lacks an arguable basis in law or fact, or that the appeal is filed for an improper purpose, such as to cause unnecessary delay;

(E) the party concerned indicates on Form EOIR–26 or FORM EOIR–29 that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do so, within the time set for filing; or

(F) the appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

(ii) *Disciplinary consequences.* The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under paragraph (d)(1-a)(i) of this section may constitute frivolous behavior under 8 CFR 292.3(a)(15). Summary dismissal of an appeal under paragraph (d)(1-a)(i) of this section does not limit the other grounds and procedures for disciplinary action against attorneys or representatives.

* * * * *

3. Section 3.12 is revised to read as follows:

§ 3.12 Scope of rules.

These rules are promulgated to assist in the expeditious, fair, and proper resolution of matters coming before Immigration Judges. Except where specifically stated, these rules apply to all matters before Immigration Judges, including, but not limited to, deportation, exclusion, bond, rescission, departure control proceedings, and disciplinary proceedings under 8 CFR 292.3.

4. Section 3.13 is revised to read as follows:

§ 3.13 Definitions.

As used in this subpart:

Administrative Control means custodial responsibility for the Record of Proceeding as specified in 8 CFR 3.11.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge including an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for hearing by Alien.

Filing means the actual receipt of a document by the appropriate Office of the Immigration Judge.

Service means physically presenting or mailing a document to the appropriate party or parties.

5. Section 3.14 is revised to read as follows:

§ 3.14 Jurisdiction and commencement of proceedings.

(a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Office of the Immigration Judge by the Service, except for bond proceedings as provided in 8 CFR 3.19 and 8 CFR 242.2(b). When a charging document is filed, a certificate of service that indicates the Office of the Immigration Judge in which the charging document is filed must be served upon the opposing party pursuant to 8 CFR 3.32.

(b) When an Immigration Judge has jurisdiction over an underlying proceeding, sole jurisdiction over applications for asylum shall lie with the Immigration Judge.

§§ 3.25 through 3.38 [Redesignated as §§ 3.27 through 3.40]

6. Section 3.25 through 3.38 are redesignated as sections 3.27 through 3.40 respectively.

§§ 3.15 through 3.24 [Redesignated as §§ 3.16 through 3.25]

7. Sections 3.15 through 3.24 are redesignated as sections 3.16 through 3.25 respectively.

8. A new § 3.15 is added to read as follows:

§ 3.15 Contents of the order to show cause and notification of change of address.

(a) In the Order to Show Cause, the Service shall provide the following administrative information to the Executive Office for Immigration Review. Omission of any of these items shall not provide the alien with any substantive or procedural rights:

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship;

(5) The language that the alien understands;

(b) The Order to Show Cause must also include the following information:

(1) The nature of the proceedings against the alien;

(2) The legal authority under which the proceedings are conducted;

(3) The acts or conduct alleged to be in violation of law;

(4) The charges against the alien and the statutory provisions alleged to have been violated;

(5) Notice that the alien may be represented, at no cost to the government, by counsel or other representative authorized to appear pursuant to 8 CFR 292.1;

(6) The address of the Office of the Immigration Judge where the Service will file the Order to Show Cause; and

(7) A statement that the alien must advise the Office of the Immigration Judge having administrative control over the Record of Proceeding of his or her current address and telephone number and a statement that failure to provide such information may result in an *in absentia* hearing in accordance with § 3.26.

(c) *Address and telephone number.*

(1) If the alien's address is not provided on the Order to Show Cause, or if the address on the Order is incorrect, the alien must provide to the Office of the the Immigration Judge where the Order to Show Cause has been filed, within five days of service of the Order, a written notice of an address and telephone number at which the alien can be contacted, on Form EOIR–33, change of address form.

(2) Within five working days of any change of address, the alien must provide written notice of the change of address on Form EOIR–33, change of address form to the Office of the Immigration Judge where the Order to Show Cause has been filed, or if venue has been changed, to the Office of the Immigration Judge to which venue has been changed.

(3) The information required by paragraphs (c)(1) and (c)(2) of this section shall include, where applicable, the alien's name, alien registration number, the old address and telephone number, the new address and telephone number, and the effective date of change.

9. Redesignated § 3.17 is revised to read as follows:

§ 3.17 Appearances.

(a) In any proceeding before an Immigration Judge in which the respondent/applicant is represented, the attorney or representative shall file a Notice of Appearance on the appropriate EOIR form with the Office of the Immigration Judge and shall serve a copy of the Notice of Appearance on the Service as required by 8 CFR 3.32(a). Such Notice of Appearance must be filed and served even if a separate Notice of Appearance(s) has previously been filed with the Service for appearance(s) before the Service.

(b) Withdrawal or substitution of an attorney or representative may be permitted by an Immigration Judge during proceedings only upon oral or written motion submitted without fee.

10. Redesignated § 3.19 is revised to read as follows:

§ 3.19 Custody/bond.

(a) Custody and bond determinations made by the service pursuant to part 242 of this chapter may be reviewed by an Immigration Judge pursuant to part 242 of this chapter.

(b) Application for an initial bond redetermination by a respondent, or his or her attorney or representative, may be made orally, in writing, or, at the discretion of the Immigration Judge, by telephone.

(c) Applications for the exercise of authority to review bond determinations shall be made to one of the following offices, in the designated order:

(1) If the respondent is detained, to the Office of the Immigration Judge having jurisdiction over the place of detention;

(2) To the Office of the Immigration Judge having administrative control over the case; or

(3) To the Office of the Chief Immigration Judge for designation of an appropriate Office of the Immigration Judge.

(d) Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation hearing or proceeding. The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service.

(e) After an initial bond redetermination, a request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination.

(f) The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision. An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to section 3.38.

(g) While any proceeding is pending before the Executive Office for Immigration Review, the Service shall immediately advise the Office of the Immigration Judge having administrative control over the Record of Proceeding of a change in the respondent/applicant's custody location or of release from Service custody, or subsequent taking into Service custody, of a respondent/applicant. This notification shall be in writing and shall state the effective date of the change in custody location or status, and the respondent/applicant's current fixed street address, including zip code.

(h) An alien in deportation proceedings who has been convicted of an aggravated felony shall not be released from custody on bond or other conditions. Nevertheless, an alien who has been lawfully admitted to the United States and who establishes to the satisfaction of the Immigration Judge that the alien is not a threat to the community and that the alien is likely to appear at any scheduled hearings, may be released on bond or other conditions designed to guarantee such appearance.

11. Redesignated § 3.20 is revised to read as follows:

§ 3.20 Change of venue.

(a) Venue shall lie at the Office of the Immigration Judge where the charging document is filed pursuant to 8 CFR 3.14.

(b) The Immigration Judge, for good cause, may change venue only upon motion by one of the parties, after the charging document has been filed with the Office of the Immigration Judge. The Immigration Judge may grant a change of venue only after the other party has been given notice and an opportunity to respond to the motion to change venue.

(c) No change of venue shall be granted without identification of a fixed street address, including city, state and ZIP code, where the respondent/applicant may be reached for further hearing notification.

12. Redesignated § 3.21 is revised to read as follows:

§ 3.21 Pre-hearing conferences and statement.

(a) Pre-hearing conferences may be scheduled at the discretion of the Immigration Judge. The conference may be held to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding.

(b) The Immigration Judge may order any party to file a pre-hearing statement of position that may include, but is not limited to: A statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of proposed witnesses and what they will establish; a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and, a statement of unresolved issues involved in the proceedings.

(c) If submission of a pre-hearing statement is ordered under paragraph (b) of this section, an Immigration Judge also may require both parties, in writing prior to the hearing, to make any evidentiary objections regarding matters contained in the pre-hearing statement. If objections in writing are required but not received by the date for receipt set by the Immigration Judge, admission of all evidence described in the pre-hearing statement shall be deemed unopposed.

13. A new § 3.26 is added to read as follows:

§ 3.26 In absentia hearings.

In any proceeding before an Immigration Judge in which the respondent/applicant fails to appear, the Immigration Judge shall conduct an *in absentia* hearing if the Immigration Judge is satisfied that notice of the time and place of the proceeding was provided to the respondent/applicant on the record at a prior hearing or by written notice to the respondent/applicant or to respondent/applicant's counsel of record, if any, at the most recent address contained in the Record of Proceeding.

14. Redesignated § 3.27 is amended by adding paragraph (c), to read as follows:

§ 3.27 Public access to hearing.

* * * * *

(c) In a proceeding before an Immigration Judge pursuant to section 216(c)(4) of the Act concerning an abused alien spouse or an abused child, the Record of Proceeding and the hearing shall be closed to the public, unless the abused alien spouse or abused child agrees that the hearing and the Record of Proceeding shall be open to the public. In the case of an abused child, the Immigration Judge may decide if the hearing and Record of Proceeding shall be open.

15. Redesignated § 3.31 is revised to read as follows:

§ 3.31 Filing documents and applications.

(a) All documents and applications that are to be considered in a proceeding before an Immigration Judge must be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding.

(b) All documents or applications requiring the payment of a fee must be accompanied by a fee receipt from the Service or by an application for a waiver of fees pursuant to 8 CFR 3.24. Any fee relating to Immigration Judge proceedings shall be paid to, and accepted by, any Service office authorized to accept fees for other purposes pursuant to 8 CFR 103.7(a).

(c) The Immigration Judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the Immigration Judge, the opportunity to file that application or document shall be deemed waived.

§ 3.32 [Amended]

16. Paragraph (a) of redesignated § 3.32 is amended by:

a. At the beginning of the first sentence, remove the word "A" and add the following in its place, "Except in *in absentia* hearings, a".

b. Revising, in the third sentence, the phrase "service to" to read "service on".

17. Redesignated § 3.33 is revised to read as follows:

§ 3.33 Translation of documents.

Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed and specifically must include the following statement:

I, (name of translator), certify that I am competent to translate this document, and that the translation is true and accurate, to the best of my abilities.

18. Redesignated § 3.37 is revised to read as follows:

§ 3.37 Decisions.

(a) A decision of the Immigration Judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the Immigration Judge in the presence of the parties and a memorandum summarizing the oral decision shall be served on the parties. If the decision is in writing, it shall be served on the parties by first class mail to the most recent address contained in the Record of Proceeding or by personal service.

19. Redesignated § 3.39 is amended by removing the period at the end thereof and adding the phrase "whichever occurs first."

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

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

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

21. Section 103.3 is amended by adding paragraph (a)(1)(v), to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) * * *

(1) * * *

(v) *Summary dismissal.* An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 292.3(a)(15). Summary dismissal of an appeal under § 103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 292.2 or in any other statute or regulation.

* * * * *

22. Section 103.7 is amended by revising the first three sentences of paragraph (a) to read as follows:

§ 103.7 Fees.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 483a shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. Any fee relating to any Executive Office for Immigration Review proceeding shall be paid to, and accepted by, any Service office authorized to accept fees. Payment of any fee under this section does not constitute filing of the document with the Office of the Immigration Judge. The Service shall return to the payer at the time of payment both the receipt for any fee paid and any documents submitted with the fee. * * *

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

23. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR Part 2.

24. Section 242.2 is amended by:

a. Revising paragraph (d); and

b. Adding a new paragraph (h), to read as follows:

§ 242.2 Apprehension, custody and detention.

* * * * *

(d) *Authority of the Immigration Judge; Appeals.* After an initial determination pursuant to paragraph (c) of this section, and at any time before a deportation order becomes administratively final, upon application by the respondent for release from custody or for amelioration of the conditions under which he or she may be released, an Immigration Judge may exercise the authority contained in section 242 of the Act to continue to detain a respondent in custody, or to release a respondent from custody, and to determine whether a respondent shall be released under bond, and the amount of the bond, if any. Application for the exercise of such authority shall be made pursuant to § 3.19 of this chapter. In connection with such application, the Immigration Judge shall advise the respondent of his or her right to representation by counsel of his or her choice at no expense to the government. He or she shall also be advised of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his or her application is heard. The Immigration Judge shall ascertain that the respondent has received a list of such programs and a copy of Form I–618 Written Notice of Appeal Right. Moreover, if the respondent has been released from custody, an application for amelioration of conditions must be made within seven (7) days after the date of such release. Thereafter, application by a released respondent for modification of the terms of release may be made only to the District Director. Upon rendering a decision on an application under this section, the Immigration Judge (or the district director if he renders the decision) shall advise the alien of his or her appeal rights under this section. The alien and the Service may appeal to the Board of Immigration Appeals from any determination of the Immigration Judge as to custody status or bond, pursuant to § 3.38 of this chapter. If the determination is appealed, a written memorandum shall be prepared by the Immigration Judge giving reasons for the decision. After a deportation order becomes administratively final, or if recourse to the Immigration Judge is no longer available because the seven day period established by this paragraph has expired, the respondent may appeal directly to the Board from a determination by the District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer in charge of an office enumerated in § 242.1(a). Such an appeal shall be perfected by filing a notice of appeal with the District Director within 10 days after the date when written notification of the determination is served upon the respondent and the Service, except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute the order of deportation and takes him into custody for that purpose. Upon the filing of a notice of appeal from a District Director's determination, the District Director shall immediately transmit to the Board all records and information pertaining to that determination. The filing of an appeal from a determination of an Immigration Judge or a District Director shall not operate to delay compliance, during the pendency of the appeal, with the custody directive from which the appeal

is taken, or to stay the administrative proceedings or deportation.

* * * * *

(h) *Notification to Executive Office for Immigration Review of change in custody status.* The Service shall notify the Office of the Immigration Judge having administrative control over the Record of Proceeding of any change in custody location or of release from, or subsequent taking into, Service custody of a respondent/applicant pursuant to 8 CFR 3.19(g).

25. Paragraph (a) of § 242.8 is amended by adding, in the first sentence, the phrase "and 242B" after the phrase "section 242(b)".

PART 292—REPRESENTATION AND APPEARANCES

26. The authority citation for part 292 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

27. Section 292.3 is amended by:

a. Revising the section heading;

b. Revising paragraph (a) introductory text;

c. Adding paragraph (a)(15); and

d. Revising paragraph (b), to read as follows:

§ 292.3 Discipline of attorneys and representatives.

(a) *Grounds.* The Immigration Judge, Board, or Attorney General may suspend or bar from further practice before the Executive Office for Immigration Review or the Service, or may take other appropriate disciplinary action against, an attorney or representative if it is found that it is in the public interest to do so. Appropriate disciplinary sanctions may include disbarment, suspension, reprimand or censure, or such other sanction as deemed appropriate. The suspension, disbarment, or imposition of other appropriate disciplinary action against an attorney or representative who is within one or more of the following categories shall be deemed to be in the public interest, for the purposes of this Part, but the enumeration of the following categories does not constitute the exclusive grounds for discipline in the public interest:

* * * * *

(15) Who has engaged in frivolous behavior in a proceeding before an Immigration Judge, the Board of Immigration Appeals, or any other administrative appellate body under title II of the Immigration and Nationality Act.

(i) An attorney or representative engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to cause unnecessary delay. Actions that, if taken improperly, may be subject to discipline include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal. The signature of an attorney or an accredited representative on any filing, application, motion, appeal, brief, or other paper constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other paper, and that, to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the document is well grounded in fact, is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law, and is not interposed for any improper purpose;

(ii) The imposition of disciplinary action for frivolous behavior under this section in no way limits the Board's authority summarily to dismissal an appeal pursuant to 8 CFR 3.1(d)(1–a).

(b) *Procedure.* (1) *Non-Service attorneys and accredited representatives.*

(i) *Investigation of charges.* Complaints regarding the conduct of attorneys and representatives practicing before the Service or the Executive Office for Immigration Review pursuant to 8 CFR 292.1 shall be investigated by the Service.

(ii) *Service and filing of charges.* If an investigation establishes, to the satisfaction of the Service, that disciplinary proceedings should be instituted, the General Counsel of the Service shall cause a copy of written charges to be served upon the attorney/representative either by personal service or by registered mail. The General Counsel shall also file the written charges with the Office of the Chief Immigration Judge immediately after service of the charges upon the attorney/representative.

(iii) *Service and filing of answer.* The attorney/representative shall answer the charges, in writing, within thirty (30) days after the date of service, and shall file the answer with the Office of the Chief Immigration Judge. Failure of the attorney/representative to answer the written charges in a timely manner shall constitute an admission that the facts and legal statements in the written charges are correct. The attorney/representative shall also serve a copy of the answer on the General Counsel. Proof of service on the opposing party must be included with all documents filed.

(iv) *Hearing.* The Chief Immigration Judge shall designate an Immigration Judge to hold a hearing and render a decision in the matter. The designated Immigration Judge shall notify the attorney/representative and the Service as to the time and the place of the hearing. At the hearing, the attorney/representative may be represented by an attorney at no expense to the Government and the Service shall be represented by an attorney. At the hearing, the attorney/representative shall have a reasonable opportunity to examine and object to the evidence presented by the Service, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Service. The Service shall bear the burden of proving the grounds for disciplinary action by clear, convincing, and unequivocal evidence. The record of the hearing shall conform to the requirements of 8 CFR 242.15.

(v) *Decision.* The Immigration Judge shall consider the record and render a decision in the case, including that the evidence presented does not sufficiently prove grounds for disciplinary action or that disciplinary action is justified. If the Immigration Judge finds that the evidence presented does sufficiently prove grounds for disciplinary action, the appropriate sanction shall be ordered. If the Immigration Judge orders a suspension, the Immigration Judge shall set an amount of time for the suspension.

(vi) *Appeal.* Either party may appeal the decision of the Immigration Judge to the Board. The appeal must be filed within ten (10) days from the date of the decision, if oral, or thirteen (13) days from the date of mailing of the decision, if written. The appeal must be filed with the office of the Immigration Judge holding the hearing. If an appeal is not filed in a timely manner, or if the appeal is waived, the decision of the Immigration Judge is final. If a case is appealed in a timely manner, the Board shall consider the record and render a decision. Receipt of briefs and the hearing of oral argument shall be at the discretion of the Board. The Board's decision shall be final except when a case is certified to the Attorney General pursuant to 8 CFR 3.1(h).

(2) *Service attorneys.* Complaints regarding the frivolous behavior of Service attorneys within the scope of § 292.3(a)(15) shall be directed to, and investigated by, the Office of Professional Responsibility of the Department of Justice. If disciplinary action is warranted, it shall be

administered pursuant to the attorney disciplinary procedures of the Department of Justice.

Dated: March 21, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-7537 Filed 4-3-92; 8:45 am]

BILLING CODE 1531-26-GF

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171

[Docket No. 24456; Amendment Nos. 1-38, 11-35, 45-21, 61-92, 65-36, 71-14, 75-5, 91-227, 93-64, 101-5, 103-4, 105-10, 121-226, 127-44, 135-41, 137-14, 139-18, and 171-16]

RIN 2120-AB95

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects an error in two amendment numbers of a final rule on airspace reclassification that was published on December 17, 1991 (56 FR 65638). This action corrects that error.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9251.

SUPPLEMENTARY INFORMATION: The document was published December 17, 1991, (56 FR 65638). In the heading, in the agency docket information, change Amendment "135-40", to read "135-41", and "93-63" to read "93-64". As corrected, the agency docket information reads as set forth above.

Denise Castaldo,

Manager, Program Management Staff.

[FR Doc. 92-7829 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AGL-6]

Alteration of Federal Airways; IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-69, V-116, and V-262 located in Illinois. This action is the result of an airspace utilization improvement study and the implementation of standard terminal arrival routes in the Chicago area. These alterations will enhance the flow of arrival traffic in the Chicago O'Hare terminal environment, improve controller workload, and reduce aeronautical chart clutter.

EFFECTIVE DATE: 0901 u.t.c., June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of V-69, V-116, and V-262 located in Illinois (56 FR 49855). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The VOR Federal airways listed in this document are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters V-69, V-116, and V-262 located in Illinois. This action alters segments of the airways in the vicinity of Chicago, IL, to implement standard terminal arrival routes serving the Chicago O'Hare terminal environment.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-69

From Shreveport, LA, via INT Shreveport 084° and El Dorado, AR, 218° radials; El Dorado; Pine Bluff, AR; INT Pine Bluff 038° and Walnut Ridge, AR, 187° radials; Walnut Ridge; Farmington, MO; Troy, IL; Capital, IL; Pontiac, IL; Joliet, IL.

* * * * *

V-116

From INT Kansas City, MO, 076° and Nepoleon, MO, 005° radials via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Jackson, MI; INT Jackson 089° and Salem, MI, 251° radials; Salem; Windsor, ON, Canada; INT Windsor 092° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

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V-262

From Peoria, IL; Bradford, IL; to INT Bradford 085° and Joliet, IL, 204° radials; Joliet.

* * * * *

Issued in Washington, DC, on March 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-7830 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANM-2]

Establishment of VOR Federal Airway V-595; OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Federal Airway V-595 between Medford, OR, and Redmond, OR. The establishment of this route will provide a direct route between Medford and Redmond. This action will improve traffic flow, as well as reduce flying time and controller workload.

EFFECTIVE DATE: 0901 u.t.c., June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On March 7, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish V-595 located between Medford, OR, and Redmond, OR (56 FR 9663). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The VOR Federal airway listed in this document is published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes V-595 between Medford, OR, and Redmond, OR. The establishment of this route will improve the flow of traffic by providing a direct route between Medford and Redmond. Controllers routinely transmit radar vectors to aircraft between these points. This action will reduce pilot/controller communications, and also reduce fuel cost and flying time by providing a more direct route.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-595

From Medford, OR; to Redmond, OR.

* * * * *

Issued in Washington, DC, on March 18, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-7831 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770 and 785

[Docket No. 920379-2079]

Exports to Cambodia and Laos; Country Group Y

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: In support of the comprehensive political settlement of the Cambodian conflict and the President's recent directive to lift the trade embargo on Cambodia, the Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) (15 CFR parts 730-799) by removing Cambodia from the Country Group Z list of embargoed countries, placing Cambodia in Country Group Y, and by revising certain licensing policies and procedures for Cambodia. Since Laos and Cambodia are not COCOM proscribed destinations, they will share a separate licensing policy from the other Group Y countries.

This rule establishes a policy of approval on a case-by-case basis for license applications for the export of commodities and technical data for authorized use in Cambodia or Laos.

EFFECTIVE DATE: This rule is effective April 6, 1992.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4252.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections

603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., NW., room 1622, Washington, DC 20230.

List of Subjects

15 CFR Parts 770

Administrative practice and procedure, Exports.

15 CFR part 785

Communist countries, Exports.

Accordingly, parts 770 and 785 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for part 770 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec.103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for Part 785 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 770—[AMENDED]

3. Supplement No. 1 to part 770 is amended, under the heading "Country Group Y", by adding the term "Cambodia" in alphabetical order and by removing the term "Cambodia" under the heading "Country Group Z".

PART 785—[AMENDED]

§ 785.1 [Amended]

4. In § 785.1, the heading is amended by removing the term "Cambodia".

5. Section 785.2 is amended by:

a. Revising the section heading;

b. Removing the term "Laos," from paragraph (a)(1); and

c. By adding a new paragraph (d) to read as follows:

§ 785.2 Country Group Q, W, and Y[1]: Geographic area of the former U.S.S.R., Eastern Europe, Mongolian People's Republic, Cambodia, and Laos.

* * * * *

(d) *Cambodia and Laos.* The general policy of the Department is to approve applications or requests to export or reexport U.S. origin commodities and technical data to Cambodia and Laos when the Department determines, on a case-by-case basis, that the commodities or technical data are for an authorized use in Cambodia or Laos and are not likely to be diverted to another country or use contrary to the national security or foreign policy controls of the United States.

Dated: April 1, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92–7952 Filed 4–2–92; 1:10 pm]

BILLING CODE 3510–DT–M

[1] See Supplement No. 1 to part 770 of this subchapter for listing of Country Groups.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–07]

Special Local Regulations for Marine Events; 13th Annual Safety-at-Sea Seminar, Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the 13th Annual Safety-at-Sea Seminar, an annual event to be held April 4, 1992, and April 5, 1992 on the Severn River, at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic within the immediate vicinity of the U.S. Naval Academy during the Pyrotechnic Display, Helicopter Rescue Demonstration, and Sail Training Craft Maneuver Demonstration. The effect will be to restrict general navigation in this area for the safety of the spectators and the participants in these events.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective for the following periods:

11 a.m. to 2:30 p.m., April 4, 1992.
11 a.m. to 2:30 p.m., April 5, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Baltimore (301) 576–2516.

DRAFTING INFORMATION: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the 13th Annual Safety-at-Sea Seminar on April 4, 1992 and April 5, 1992 in the Severn River just off the Robert Crown Sailing Center, U.S. Naval Academy, Annapolis, Maryland. This event involves approximately 950 midshipmen, officers, coaches and guests. The event includes demonstrations of life rafts, pyrotechnics, use of anti-exposure suits, man overboard procedures, and a helicopter rescue. Since this event is of the type contemplated by these

regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commerical traffic should not be severely disrupted.

Dated: March 20, 1992.

W.T. Leland,

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

[FR Doc. 92-7752 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD11-91-07]

Anchorage Regulations; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations pertaining to the anchorage grounds of San Francisco Bay encompassing the waters known as Anchorage No. 8. The small size of this anchorage and its proximity to the Oakland Inner Harbor Entrance Channel and the Naval Air Station make it unsuitable for operations involving the transfer of dangerous cargoes or combustible liquids. It is best suited as a temporary anchorage for vessels awaiting pier facilities or other anchorage areas.

This amendment will help safeguard San Francisco Bay, the environment, vessels and cargo against accidents, pollution, destruction, loss, or other incidents of a similar nature. Loading of any dangerous cargoes or combustible liquids in Anchorage No. 8 is now prohibited, unless authorized by the Captain of the Port.

In the past, Anchorage No. 8 has not been used by vessels to conduct loading of dangerous cargoes or combustible liquids. Anchorage No. 9, which is adjacent to Anchorage No. 8, is larger and is in an area transited by vessels underway on major shipping channels. Anchorage No. 9 has historically been used for bunkering. Vessels which must conduct lightering or bunkering operations of dangerous cargoes or combustible liquids can still do so in Anchorage No. 9. This amendment has made an existing "specific regulation" applicable to Anchorage No. 8 and has not affected any regulations pertaining to any other anchorage ground in San Francisco Bay.

EFFECTIVE DATE: May 6, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Lorne Thomas, Coast Guard Marine Safety Office, San Francisco Bay, CA, (510) 437-3073.

SUPPLEMENTARY INFORMATION: On Monday, August 12, 1991 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (56 FR 38093). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this proposed regulation are Lieutenant Lorne W. Thomas, Project Officer for the Captain of the Port, and Lieutenant Commander Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received concerning this rule making.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be so minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations contain no information collection or record keeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant environmental impact and they are categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Special anchorage areas, Anchorage grounds.

In consideration of the foregoing, subpart B of part 110 of title 33, Code of Federal Regulations, is amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.224 Table 110.224(d)(1) is amended by revising the entries for Anchorages 8 and 9 to read as follows:

§ 110.224 [Amended]

* * * * *

(d) * * *

Anchorage No.	General location	Purpose	Specific regulations
*	*	*	*
8	.....do.....	.....do.....	Notes a, b, c.
9	.....do.....	.....do.....	Notes a, b.
*	*	*	*

* * * * *

Dated: March 19, 1992.

M.E. Gilbert,

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

[FR Doc. 92-7753 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-91-73]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the Sunrise Boulevard (SR 838) drawbridge, mile 1062.6, at Fort Lauderdale, because the low-level drawbridge that warranted the existing special regulations has been replaced by a higher and wider bascule bridge providing improved highway traffic flow and requiring fewer drawbridge openings for vessels. This change will ease the burden on navigation since special operating restrictions are no longer necessary to accommodate the needs of vehicular traffic.

EFFECTIVE DATE: This rule becomes effective on May 6, 1992.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, Project Manager at 305-536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this document are Brodie E. Rich, Project Manager, and LT J. M. Losego, Project Attorney.

Regulatory History

On June 17, 1991, the Coast Guard published a notice of proposed rulemaking entitled Atlantic Intracoastal Waterway, FL in the **Federal Register** (56 FR 27708). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This final rule revokes the regulations for the Sunrise Boulevard (SR 838) drawbridge, mile 1062.6, at Fort Lauderdale, because the low-level drawbridge that warranted the existing special regulations has been replaced by a higher and wider bascule bridge providing improved highway traffic flow and requiring fewer drawbridge openings for vessels. This change is being made in order to ease the burden on navigation since special operating restrictions are no longer necessary to accommodate the needs of vehicular traffic. This action will accommodate current vehicular traffic and better provide for the needs of navigation.

Discussion of Comments and Changes

The Commander, Seventh Coast Guard District, published the proposal as Public Notice 16–91 dated June 28, 1991. In each notice, interested persons were given until August 1, 1991, to submit comments. Four comments were received in response to the proposed rule. One comment supported the proposed regulation change. Three commenters were opposed to the proposed regulation change; one commenter preferred a 30-minute schedule; one commenter desired that the bridge openings remain on a schedule during the winter months to assist motorists in planning their transits over the bridge; and one commenter stated that he was representing his building of 93 owners who desired 30-minute openings on a year-round basis. The Coast Guard has carefully considered the comments. No new information was provided to justify a change to the proposed rule. The final rule is, therefore, unchanged from the proposed rule published on June 17, 1991.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Based upon the information in the final evaluation, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Since there is no economic impact, a full regulatory evaluation is unnecessary. We conclude this, because the rule removes all restrictions on the passage of vessels through the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether this final rule 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 has determined that the economic impact of the proposal will be minimal on all entities since it will reduce the navigational burden on commercial vessels and will not affect tugs with tows. Therefore, the Coast Guard certifies that under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**".

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, part 117 of title 33, Code of Federal Regulations, is amended as set forth below:

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).

2. In section 117.261, Paragraph (gg) is removed and reserved.

§ 117.261 [Amended]

Dated: March 16, 1992.

K. M. Ballantyne,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 92–7756 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD5–92–004]

Drawbridge Operation Regulations; Roanoke River, Williamston, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the regulations for the bridge across the Roanoke River, mile 37.5, Williamston, North Carolina, because the swing bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates all need for regulation.

EFFECTIVE DATE: These regulations become effective April 6, 1992.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6227.

SUPPLEMENTARY INFORMATION: Drafting Information: The drafters of this notice are Linda L. Gilliam, Project Officer, and LT Monica L. Lombardi, Project Attorney.

Background and Purpose

The swing bridge across the Roanoke River, mile 37.5, in Williamston, North Carolina, was replaced by a high level fixed bridge along the same alignment. The existing bridge has been removed making it necessary to remove 33 CFR 117.837(a). This action has no economic consequences. It merely removes

regulations for a swing bridge that no longer exists.

Regulatory Evaluation

This action is considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary.

Small Entities

Since there will be no impact of these regulations, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will have no economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed under the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying at Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is 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).

2. Section 117.837 is revised to read as follows:

§ 117.837 Roanoke River.

The draw of the Seaboard System Railroad bridge, mile 94.0 at Palmyra, need not be opened for the passage of vessels.

Dated: March 19, 1992.

W.T. Leland,

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

[FR Doc. 92–7754 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

Idaho; Final Authorization of the State Hazardous Waste Program Revision

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Idaho has applied for final authorization for its corrective action component of its hazardous waste program pursuant to section 3006(b) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6926(b). Previously, EPA granted interim authorization effective April 9, 1990, (see 55 FR 11015 dated March 26, 1990), for the federal corrective action provisions promulgated as of July 1, 1987 pursuant to section 3004(u) of the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Environmental Protection Agency (EPA) has reviewed Idaho's request for final authorization of the corrective action component (subsequently referred to as "program revision") of the State's hazardous waste program. EPA has made a decision, subject to public review and comment, that the program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve and grant final authorization for the same corrective action provisions that were previously granted interim authorization. Idaho's application for this program revision is available for public review and comment.

DATES: Final authorization and termination of interim authorization for Idaho shall be effective June 5, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. The incorporation by reference of certain publications listed in the regulations are approved by the Director of the Federal Register as of June 5, 1992. All comments on Idaho's program revision application must be received by the close of business May 6, 1992.

ADDRESSES: Copies of Idaho's program revision application are available Monday through Friday, 8 a.m. to 5 p.m., at the following locations for inspection and copying: Idaho Department of Health and Welfare, Division of Environmental Quality, Planning and Evaluation Division, 1410 N. Hilton, Boise, Idaho 83706, phone, (208) 334–5879 and the U.S. EPA, Region 10, Library, 1200 6th Avenue, Seattle, WA, 98101, Phone, (206) 553–1289. Written comments should be sent to Nina Kocourek, U.S. EPA, Region 10, 1200 6th Avenue, Mail Stop HW–107, Seattle, WA., 98101.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA, Region 10, 1200 6th Avenue, Mail Stop HW–107, Seattle, WA., 98101, Phone, (206) 553–6502.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the HSWA allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to the State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124 and 270.

B. Idaho

Idaho initially received final authorization on March 26, 1990, effective April 9, 1990, for those non-HSWA and HSWA requirements promulgated as of July 1, 1987, as well as received interim authorization on March 26, 1990, effective April 9, 1990, for the HSWA corrective action provisions of Section 3004(u), promulgated as of July 1, 1987. On February 7, 1992, the State of Idaho submitted a written request

seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Idaho's application, and has made an immediate final decision that Idaho's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the corrective action components of the State's hazardous waste program. The public may submit written comments on EPA's immediate final decision up until May 6, 1992. Copies of Idaho's application for this program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Idaho's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If a relevant adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In summary, the State's request for EPA to proceed with final authorization resulted from a series of events which have occurred since the State received interim authorization for the State's hazardous waste program corrective action components. The State's initial application for final authorization, dated July 7, 1988, included the corrective action components. However, EPA was concerned about Idaho's capability to implement a comprehensive corrective action program as at that time, Idaho had very little experience in corrective action. EPA's concern resulted in Idaho agreeing to request interim authorization for the corrective action portion of the program. On April 9, 1990 the State was granted interim authorization for its corrective action component. As a part of interim authorization, the State and EPA jointly developed capability milestones which defined specific tasks and outputs which needed to be successfully completed to demonstrate that the State's capability existed to receive final authorization for the corrective action program. At this time, EPA has determined that the State has sufficiently demonstrated program capability through satisfactorily completing the agreed to milestones. More specifically, the State has continued to do thorough quality compliance inspections, met its inspection commitments, continued to issue both timely and appropriate enforcement actions, and satisfactorily completed the RCRA facility permitting and corrective action milestones. EPA has summarized the State's progress in a series of capability status reports summarizing the State's demonstration period which are available upon request.

This program revision will not authorize the State to operate the RCRA program over any Indian lands; this authority remains with EPA.

C. Decision

I conclude that Idaho's RCRA corrective action program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Idaho is granted final authorization to operate its hazardous waste program as revised. Upon the effective date of this program revision the State's interim authorization granted on March 26, 1990, effective April 9, 1990, will be terminated.

Idaho has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Idaho also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize Idaho's program and for incorporation by reference of those provisions of Idaho's statutes and regulations that EPA will enforce under section 3008 of RCRA. Therefore, EPA is amending §§ 272.651 and 272.652.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Idaho's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 25, 1992.

Dana Rasmussen,

Regional Administrator.

For reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Section 272.651 is amended by revising introductory text; and by revising paragraphs (a) (1) and (b) to read as follows:

§ 272.651 State-administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Idaho has final authorization for the following elements submitted to EPA in Idaho's program application for final authorization and approved by EPA effective on April 9, 1990, (see 55 FR 11015, dated March 26, 1990); and revision application for final authorization and approved by EPA effective on June 5, 1992.

(a) *State Statutes and Regulations.* (1) The requirements in the Idaho statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia, 22906–7587. Copies may be inspected at the Office of Federal Register, 1100 "L" Street NW., room 8401, Washington, DC; U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101; and at the Idaho Department of Health and Welfare, Administrative Procedures Section, 1410 N Hilton, Boise, Idaho 83720.

(i) Statutory authority is vested in the State of Idaho, Board of Health and

Welfare, by the Hazardous Waste Management Act of 1983 (HWMA). This includes the following statutes as contained in chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated, Volume 7A, published in 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4401; 39–4402; 39–4406; 39–4407; 39–4412; 39–4416; 39–4417; 39–4418; 39–4419; 39–4420; 39–4421; 39–4422; 39–4427; 39–4428; 39–4429; 39–4430; 39–4431; 39–4432; and as contained in the 1988 Cumulative Pocket Supplement, Idaho Code, Volume 7A published in June 1988; by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39–4403; 39–4404; 39–4405; 39–4408; 39–4409; 39–4410(3); 39–4411; 39–4417B; 39–4423; and 39–4426.

(ii) The following are the Idaho Department of Health and Welfare Rules and Regulations, as contained in Title 1, chapter 5, "Rules, Regulations and Standards for Hazardous Waste" (hereinafter referred to as the "IDHW Regulations"), in effect as of June 10, 1988, are part of the approved program under RCRA: IDHW Regulations, sections: 16.01.5000; 16.01.5001; 16.01.5002, 01, 02; 16.01.5003; 16.01.5004; 16.01.5005; 16.01.5006, 01, 02; 16.01.5007; 16.01.5008; 16.01.5009; 16.01.5010, 01, 02; 16.01.5011; 16.01.5012; 16.01.5013; 16.01.5356, 01, 02, 03, 04, 05; and Appendix A.

* * * * *

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10 and Idaho Department of Health and Welfare signed by the EPA Regional Administrator on (insert appropriate date), is a part of the authorized hazardous waste management program under subtitle C of RCRA 42 U.S.C. 6921 *et seq.*

* * * * *

§ 272.652 [Removed]

3. Section 272.652 is removed.

[FR Doc. 92–7741 Filed 4–3–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 920128–2028]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Interim final rule and request for comments.

SUMMARY: NMFS issues this interim final rule to revise the permitting requirements applicable to vessels in the fishery for coastal migratory pelagic fish. Specifically, this interim final rule (1) removes from the regulations the specification of an April-through-March permit year; (2) conditions the reissuance of a permit on the receipt of all required reports for the vessel; (3) removes from the regulations the specification of the permit fee; and (4) otherwise clarifies existing policies and procedures for issuing vessel permits. The intended effects of this interim final rule are to standardize and simplify, to the extent possible, the permitting requirements applicable to participants in the federally managed fisheries off the South Atlantic and Gulf of Mexico states.

EFFECTIVE DATE: April 1, 1992. Written comments must be received on or before May 1, 1992.

ADDRESSES: Comments may be sent to W. Perry Allen, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish is managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and its implementing regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The regulations at 50 CFR 642.4 require (1) an owner or operator of a fishing vessel to obtain a vessel permit in order for persons aboard that vessel to fish for king or Spanish mackerel in the exclusive economic zone (EEZ) under the commercial allocations; and (2) an owner or operator of a charter vessel to obtain charter vessel permit in order for persons aboard that vessel to fish for coastal migratory pelagic fish in the EEZ. This interim final rule revises the permitting requirements to standardize them, to the extent possible, with the current permitting requirements in other fisheries, including the reef fish fishery of the Gulf of Mexico and the snapper-grouper fishery off the South Atlantic states, and with the proposed permitting requirements for the Atlantic shark fishery. The goal of this standardization is to reduce the occasions when an applicant is required to apply for a Federal fisheries permit. In lieu of an application for a permit for each fishery submitted at different times during a year, an applicant would apply once each year for all fisheries in which he desires a permit. The total permit fees paid by an applicant would be reduced accordingly.

This revision of the permitting requirements (1) emphasizes that permits are issued to vessels rather than to owners/operators; (2) differentiates clearly between the commercial vessel permit for king and Spanish mackerel and the charter vessel permit for coastal migratory pelagic fish; (3) clarifies that, for the documentation of earned income to meet the criterion for a commercial vessel permit, NMFS may require the submission of copies of appropriate forms and schedules of the applicant's income tax return, and clearly states that such forms and schedules are treated as confidential but may be released to and verified by the Internal Revenue Service; (4) clarifies who must provide the documentation of earned income when applying for a permit for a partnership-owned commercial fishing vessel, namely, a general partner of the partnership or the vessel operator; (5) removes the specification of a fixed permit year, currently April through March, thus allowing consolidation of an owner/operator's applications for permits; (6) conditions the reissuance of a permit on the receipt prior to the renewal application of all reports required of the applicant under the regulations for the coastal migratory pelagic fishery; and (7) removes from the regulations the specification of the permit fee, currently $23.

Items (1) through (4), above, are clarifications of existing procedures and, thus, do not change the current processing of applications or issuance of permits.

Removing the fixed permit year is necessary to enable NMFS to consolidate applications for vessel permits issued by its Southeast Region. Currently, Federal vessel permits in the reef fish fishery in the Gulf of Mexico and in the snapper-grouper fishery off the South Atlantic states are issued on an annual basis to expire at the end of the month of birth of the vessel owner. A similar procedure is expected to be implemented in the Atlantic shark fishery. Removal of the fixed permit year in the coastal migratory pelagic fishery would standardize the expiration of permits in these fisheries.

The regulations at 50 CFR 642.5 (a) and (b) require that, if selected by the Science and Research Director, Southeast Fisheries Center, NMFS, the owner or operator of a permitted commercial or charter vessel must

submit reports on catch and effort. NMFS believes that a selected vessel should not have its permit reissued until all required reports have been submitted. Accordingly, the revisions make the reissuance of a permit conditional on the receipt of all reports that were to be submitted prior to the permit renewal application. This condition for reissuance of a permit is currently in the regulations for the reef fish fishery of the Gulf of Mexico, the snapper-grouper fishery off the South Atlantic states, and the Atlantic swordfish fishery and is proposed for the Atlantic shark fishery. It will have no immediate effect in the fishery for coastal migratory pelagic fish because no commercial or charter vessels currently have a mandatory requirement to submit reports.

This interim final rule clarifies that a fee is charged for each application for a permit, rather than for each permit issued. Most of NMFS's costs in administering the permit system are incurred in processing applications, rather than in issuing permits. The Magnuson Act authorizes a level of fees not exceeding the administrative costs of processing applications and issuing permits. At least annually, NMFS computes its costs in accordance with the NOAA Finance Handbook. Costs vary based on such things as increases in Federal salaries/overhead and reductions due to improved efficiency in the permitting system. Based on current administrative costs, the fee for each application for a vessel permit is $34 and for a replacement permit is $7. The current fees specified in the regulations are $23 and $0, respectively. This rule removes specification of the fees from the regulations. The amounts of fees that must be remitted with each application will be specified by NMFS with the application forms. NMFS will charge fees in accordance with the latest computation commencing with applications for permits in the fishery for coastal migratory pelagic fish that will be effective on and after April 1, 1992.

NMFS believes this interim final rule will benefit participants in the fishery for coastal migratory pelagic fish and should be implemented fore existing permits, which expire on March 31, 1992, are renewed. Accordingly, NMFS is issuing this rule in interim-final without opportunity for prior public comment. It is effective April 1, 1992. However, comments on this interim rule are invited and will be considered in formulation of a final rule if received by May 1, 1992. NMFS is sending a copy of this interim final rule to each owner and operator of a vessel that is currently permitted in the fishery for coastal migratory pelagic fish. NMFS is also mailing a news release summarizing the contents and announcing the availability of the interim final rule to approximately 2,700 other addresses on the constituency list of the Southeast Region, NMFS.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this interim final rule is necessary for the conservation and management of the fishery for coastal migratory pelagic fish and that it is consistent with the Magnuson Act and other applicable Federal law.

The Assistant Administrator determined that this interim final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Administrator, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), finds for good cause that, in order to maximize the benefits for participants in the fishery, these revisions must be effective before renewal of existing permits, which expire on March 31, 1992. It is impracticable to provide notice and opportunity to comment for this rule. Likewise, the Assistant Administrator, pursuant to section 553(d)(3) of the APA, finds that, for the same reasons, good cause exists for making this rule immediately effective.

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by section 553 of the APA or by any other law. Accordingly, neither an initial nor final regulatory flexibility analysis has been or will be prepared.

The interim final rule does not change any of the factors considered in the enviromental impact statement prepared for the FMP or in the environmental assessments prepared for its amendments; accordingly, this action is categorically excluded from the requirement to prepare an environmental assessment, as specified in NOAA Administrative Order 216–6.

In the final rules implementing the FMP and its amendments, NMFS concluded that, to the maximum extent practicable, the FMP and amendments are consistent with the approved coastal zone management programs of all the affected states. Since this interim final rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and amendments and their consistence determinations, a new consistency determination under the Coastal Zone Management Act is not required.

This interim final rule restates the collection-of-information requirement for applications for permits, which is subject to the Paperwork Reduction Act. That requirement was previously approved and OMB Control No. 0648–0205 applies. That requirement has a public reporting burden estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

This interim 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 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 1, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. Section 642.4 is revised to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability.* (1) Annual vessel permits for king and Spanish mackerel.

(i) For a person who fishes aboard a vessel in the EEZ to be eligible for exemption from the bag limits specified in § 642.28(a) and to fish under a commercial allocation specified in § 642.21 (a) or (c), a vessel permit for king and Spanish mackerel must be issued to the vessel and be on board.

(ii) A vessel permit for king and Spanish mackerel may be obtained by a qualifying owner or operator of a charter vessel. However, a person aboard such charter vessel must adhere to the bag limits when the vessel is under charter.

(iii) For a vessel owned by a corporation or partnership to be eligible for a vessel permit for king or Spanish mackerel, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(iv) A vessel permit for king and Spanish mackerel issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(2) Annual charter vessel permits for coastal migratory pelagic fish. For a person aboard a charter vessel to fish for or possess a coastal migratory pelagic fish in or from the EEZ, a charter vessel permit for coastal migratory fish must be issued to the vessel and be on board.

(b) *Application for a vessel permit for king and Spanish mackerel.* (1) An application for a vessel permit for king and Spanish mackerel must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vi) A sworn statement by the applicant certifying that at least 10 percent of his or her earned income was derived from commercial fishing, i.e., sale of the catch, during the calendar year preceding the application;

(vii) Documentation supporting the statement of income, if required by paragraph (b)(3) of this section;

(viii) Any other information concerning vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director; and

(ix) Any other informtion that may be necessary for the issuance or administration of the permit.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential, but may be released to and verified by the Internal Revenue Service.

(c) *Application for a charter vessel permit for coastal migratory pelagic fish.* (1) An application for a charter vessel permit for coastal migratory pelagic fish must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vi) Any other information concerning vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director; and

(vii) Any other information that may be necessary for the issuance or administration of the permit.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) or (c) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and, in the case of an application for a vessel permit for king and Spanish mackerel, the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 642.5 (a) or (b).

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A vessel permit specified in paragraph (b) or (c) of this section is valid only for the vessel for which it is issued. Such permit is transferable or assignable on the sale of the vessel to a new owner. The new owner must apply for a permit in accordance with the procedures of paragraph (b) or (c) of this section within 15 days of the purchase. The application must be accompanied by a copy of a signed bill of sale. The new owner of a permitted vessel may fish with the preceding owner's permit until a new permit is issued or his application is disapproved, but for a period not to exceed 60 days from the date of purchase. Until a new permit is received, a copy of the signed bill of sale must be aboard the vessel and available for inspection by an authorized officer.

(h) *Display.* A vessel permit specified in paragraph (b) or (c) of this section must be carried on board the vessel. The operator of a fishing vessel must present

the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

(l) *Change in application information.* The owner or operator of a vessel with a permit specified in paragraph (b) or (c) of this section must notify the Regional Director within 30 days after any change in the application information required by paragraph (b) or (c) of this section. The permit is void if any change in the information is not reported within 30 days.

§ 642.5 [Amended]

3. In § 642.5(b) introductory text, the reference to "§ 642.4(a)(3)" is revised to read "§ 642.4(a)(2)".

§ 642.7 [Amended]

4. In § 642.7, in paragraph (f), the reference to "§ 642.4(g)" is revised to read "§ 642.4(h)"; and in paragraph (v), the reference to "§ 642.4(a)(3)" is revised to read "§ 642.4(a)(2)".

[FR Doc. 92–7845 Filed 4–1–92; 3:44 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 66
Monday, April 6, 1992

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE87

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to amend the criteria that are considered when defining Federal Wage System wage area boundaries by combining economic communities or political units. The proposed regulations would clarify that the criteria in the regulations will be applied generally in the order listed.

DATES: Comments must be received on or before May 6, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allan K. Summers, (202) 606–2848 or (FTS) 266–2848.

SUPPLEMENTARY INFORMATION: OPM published final regulations on November 1, 1990, that defined certain policies, practices, and criteria for fixing and administering the pay of prevailing rate employees (55 FR 46140). Included in the revised regulations were the criteria that OPM considers and applies when combining adjacent economic communities or political units under the appropriated fund system (5 CFR 532.211(d)) or combining two or more counties under the nonappropriated fund system (5 CFR 532.219(c)). In an effort to make the appropriated and nonappropriated fund criteria more uniform, OPM added two of the nonappropriated fund criteria to the appropriated fund criteria—namely, "distance" and "similarities in overall population, employment, and the kinds and sizes of private industrial establishments."

Recent discussions at the Federal Prevailing Rate Advisory Committee raised some concern by the labor members that the added criteria of "similarities in overall employment, and the kinds and sizes of private industrial establishments" may be used as the single determining factor in decisions on combining wage areas. It was not OPM's intent to make this distinction when it amended the criteria last year. To alleviate this concern, the proposed regulations add new pargraphs to §§ 532.211(d) and 532.219(c), recommended by the Federal Prevailing Rate Advisory Committee, which state that "generally, these criteria are considered in the order listed." This recognizes the fact that the criteria, as they are now listed in the regulation, historically have been considered and applied in that order in most cases. Each request to combine wage areas will, of course, continue to be considered on its individual merits, and no one criterion will be the single determining factor.

E.O. 12291, Federal Regulation

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

Regulatory Flexibilty Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

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

2. In § 532.211, paragraph (d)(2) is redesignated as (d)(3) and a new paragraph (d)(2) is added to read as follows:

§ 532.211 Criteria for establishing appropriated fund wage areas.

* * * * *

(d) * * *

(2) Generally, the criteria listed in paragraph (d)(1) of this section are considered in the order listed.

* * * * *

3. In § 532.219, paragraph (c) is revised to read as follows:

§ 532.219 Criteria for establishing nonappropriated fund wage areas.

* * * * *

(c)(1) Two or more counties may be combined to constitute a single wage area through consideration of:

(i) Proximity of largest activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

(2) Generally, the criteria listed in paragraph (c)(1) of this section are considered in the order listed.

* * * * *

[FR Doc. 92–7772 Filed 4–3–92; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 735

Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to re-issue certain uniform standards of conduct regulations for officers and employees of the executive branch, complementing the uniform standards of ethical conduct being issued by the Office of Government Ethics (OGE). OPM's regulation will preserve the executive branch-wide applicability of certain provisions in 5 CFR part 735 which are not included in OGE's proposed regulation. OPM's regulation will

provide for restrictions on certain gambling activities, conduct prejudicial to the government, and the special preparation of persons for civil service and foreign service examinations.

DATES: Comments by agencies and the public are invited and are due May 6, 1992.

ADDRESSES: Office of Personnel Management, Office of the General Counsel, 1900 E Street, NW., room 7353, Washington, DC 20415, Attention: Stuart Rick.

FOR FURTHER INFORMATION CONTACT: Stuart Rick, Associate General Counsel, Office of Personnel Management, telephone (202) 606–1920 or (FTS) 266–1920.

SUPPLEMENTARY INFORMATION: Last year, the Office of Government Ethics (OGE) published for comment proposed standards of ethical conduct regulations. See 56 FR 33778–33815 (July 23, 1991). OGE's regulation will implement Executive Order 12674 (as modified by Executive Order 12731). When OGE's regulation becomes final, it will apply to all executive branch employees. Thus, OGE's regulation will supersede each agency's internal standards of conduct which are based upon model standards of conduct in Part 735 of OPM's regulations in this title, and will render most of current part 735 obsolete.

Section 403 of Executive Order 12674 (together with 5 U.S.C. 7301) authorizes OPM to issue regulations, covering areas of conduct that OGE's regulations do not cover. As proposed, OGE's regulations will not include the provision currently at 5 CFR 735.208, which provides that employees generally shall not participate in any gambling, betting, or lotteries while on Government-owned or leased property, or while on duty for the Government. In addition, OGE's regulations will not include the provision currently at 5 CFR 735.209, which provides that employees shall not engage in certain types of conduct prejudicial to the Government. Also, OGE's regulations will not specifically address the provision currently at 5 CFR 735.203(c), which restricts employees with respect to the preparation of a person or class of persons for an examination of OPM or the Board of Examiners for the Foreign Service.

In order to preserve the general applicability of these provisions in the executive branch, OPM proposes to republish them in 5 CFR part 735, together with new language in the part which will make the provisions in the part applicable to all employees in the executive branch and enforceable by their employing agencies. In addition, OPM will make the following changes to the terms of these provisions.

A reference to section 3 of Executive Order 10927, in the provision regarding gambling activities, is being updated to refer to section 7 of Executive Order 12353. When Executive Order 10927 was superseded by Executive Order 12353, section 3 of Executive Order 10927 was carried over as section 7 of Executive Order 12353. Thus, activities under section 7 of Executive Order 12353, *e.g.*, raffles held by recreation associations conducted under policies and procedures approved by the head of the Department or agency concerned, will not be precluded by the provision regarding gambling activities.

Authorization for an employee's special preparation of a person or class of persons for an examination of OPM or the Board of Examiners for the Foreign Service, that depends on nonpublic information obtained as a result of the employee's Government employment, will not be available from the head of the employee's agency. Rather, such authorization will have to be obtained from the Director of OPM or her designee, or from the Director General of the Foreign Service or his designee.

In accordance with the savings provision in section 502 of Executive Order 12674, the regulations currently in § 735.106 and subpart D of 5 CFR part 735, regarding confidential statements of employment and financial interests, will remain in effect until replaced by revised financial disclosure reporting regulations being issued by OGE (See that agency's RIN 3209–AA00). Section 735.106 of 5 CFR part 735, "Reviewing statements and reporting conflicts of interest," is being moved to subpart D of 5 CFR part 735, and redesignated as 5 CFR 735.413.

Administrative Procedure Act

Interested persons are invited to submit written comments to OPM on this proposed regulation, to be received on or before May 6, 1992. The comments will be cafrefully considered and any appropriate changes will be made to the regulation as proposed, before a final rule is adopted and published by OPM in the Federal Register.

E.O. 12291, Federal Regulation

As Director of the Office of Personnel Management, I have determined that this is not a major rule as defined in section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Personnel Management, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

As Director of the Office of Personnel Mangement, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 735

Conflict of interests; Government employees.

Dated: February 28, 1992.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 735 as follows:

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority for part 735 is revised to read as follows:

Authority: 5 U.S.C. 7301; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 753.106 [Redesignated as 735.413]

2. Section 735.106 is redesignated as section 735.413.

3. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

Subpart A—General Provisions

§ 735.101 Definitions.

In this part:

Agency means an Executive agency (other than the General Accounting Office) as defined by section 105 of title 5, United States Code, the Postal Service, and the Postal Rate Commission.

Employee means any officer or employee of an agency, including a special Government employee, but does not include a member of the uniformed services.

Special Government employee means a "special Government employee," as defined in section 202 of title 18, United States Code, who is employed in the

executive branch, but does not include a member of the uniformed services.

Uniformed services has the meaning given that term by section 2102 of title 5, United States Code.

§ 735.102 Disciplinary action.

An employee's violation of any of the regulations in subpart B of this part may be cause for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

§ 735.103 Other regulations pertaining to conduct.

In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may be cause for the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

4. Subpart B is revised to read as follows:

Subpart B—Standards of Conduct

Subpart B—Standards of Conduct

§ 735.201 Gambling.

(a) An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(b) This section does not preclude activities:

(1) Necessitated by an employee's law enforcement duties; or

(2) Under section 7 of Executive Order 12353 and similar agency-approved activities.

§ 735.202 Safeguarding the examination process.

(a) An employee shall not engage in the preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph (a) if:

(1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or

(2) Such preparation is authorized in writing by the Director of the Office of Personnel Management or his or her designee, or by the Director General of the Foreign Service or his or her designee.

§ 735.203 Conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

Subpart C [Removed]

5. Subpart C is removed and reserved.

[FR Doc. 92-7744 Filed 4-3-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

1993 Wheat Program, Acreage Reduction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR part 1413 to set forth the acreage reduction percentage for the 1993 crop of wheat. This action is required by section 107B of the Agricultural Act of 1949 (the 1949 Act), as amended.

DATES: Comments must be received on or before May 1, 1992, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Dean Ethridge, Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3790–S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Food Grain Analysis Division, USDA–ASCS, room 3740–S, P.O. Box 2415, Washington, DC 20013 or call (202) 720–7923.

SUPPLEMENTARY INFORMATION: The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above named individual.

This proposed rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation is required by section 107B(o) of the 1949 Act to request comments with respect to the subject matter of this rule.

It has been determined by an environmetnal evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are Wheat Production Stabilization—10.058.

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

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive. There are no issues involving preemption or the exhaustion of administrative remedies.

This proposed rule does not impose any new information collection requirements on the public, or increase the reporting buren for the information collections currently approved by the Office of Management and Budget (OMB) under OMB No. 0560–0092.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 107B of the 1949 Act, and acreage reduction program is required to be implemented for the 1993 wheat crop if it is determined that the total supply of wheat would otherwise be excessive.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of wheat to desirable goals. A paid land diversion

program is not considered because, given the allowed ARP percentages, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reducton to the acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce wheat in excess of the permitted acreage for the farm plus any wheat acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm.

If an ARP program for the 1993 crop is in effect, the program must be announced no later than June 1, 1992. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of wheat since the program was first announced. These adjustments must be made no later than July 31, 1992.

In addition, section 1302 of the Agricultural Reconciliation Act of 1990 provides that if by June 30, 1992, the United States does not enter into an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade, the Secretary is authorized to adjust the ARP percentage, as appropriate, to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

In accordance with section 107B of the 1949 Act, not less than 60 days before the program is announced for a crop of wheat, proposals for public comment on various program options for the crop of wheat are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option.

In determining the 1993 wheat ARP, the Secretary will choose a specific ARP percentage from within a range established by the estimated ending stocks-to-use ratio for the 1992/93 wheat marketing year. If it is estimated that the 1992/93 ending stocks-to-use ratio in percentage terms (S/U) will be—

(i) More than 40 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(ii) Equal to or less than 40 percent, the ARP may not be more than 0 to 15 percent.

The S/U for the 1992/93 marketing year is estimated to be below 40 percent. Based on this estimate, the 1993 ARP may be not more than 15 percent.

In addition, section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1993 crop of wheat may not be less than 5 percent. This provision does not apply if the beginning stocks of soybeans for the 1991/92 marketing year are less than 325 million bushels or if the estimated S/U for the 1992 wheat crop is less than 34 percent.

The current estimate of soybean stocks on September 1, 1991, is 329 million bushels. The estimated S/U for the 1992/93 wheat crop is 26.4 percent. Thus, under current supply and use estimates for soybeans and wheat, the minimum 5-percent-ARP provision is not applicable.

The 1992 ARP options considered are:

Option 1. 5-percent ARP.
Option 2. O-percent ARP.
Option 3. No ARP.

An ARP higher than 5 percent is not considered because a higher ARP, under current estimates, would pose too great a risk of shortage if an unanticipated production shortfall occurred. The estimated impacts of the ARP options are shown in table 1.

TABLE 1.—ESTIMATED IMPACTS OF 1993 ARP OPTIONS

ITEM	Option 1	Option 2	Option 3
ARP (Percent)	5	0	None
Participation (Percent)	85	87	90
Planted Acres (Million acres)	71.5	74.0	77.0
Production (Million bushels)	2,350	2,415	2,485
Domestic use (Million bushels)	1,145	1,160	1,175
Exports (Million bushels)	1,175	1,185	1,200
Ending stocks (Million bushels)	645	685	725
Season average producer price (dollars per bushel)	2.85	2.77	2.70
Deficiency payments (Dollar million)	2,105	2,342	2,623

Accordingly, comments are rquested as to whether there should be a 1993 acreage reduction percentage, and, if so, whether it should be 0 percent, 5 percent, or some percentage within the range of 0 to 15 percent. The final determination of this percentage will be set forth at 7 CFR 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308; 1308a; 1309; 1441–2, 1444–2, 1444f; 1445b–3a; 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54(a)(1) is revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a)* * *

(1)(i) 1991 wheat, 15 percent;

(ii) 1992 wheat, 5 percent;

(iii) 1993 wheat, if announced, shall be within the range of 0 to 15 percent, as determined and announced by CCC.

* * * * *

Signed April 1, 1992 at Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–7906 Filed 4–2–92; 10:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–38–AD]

Airworthiness Directives; Boeing Model 747–300 and –400 Series Airplanes; and Boeing Model 747 Series Airplanes Modified to Have a Stretched Upper Deck

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–300 and –400 series airplanes, and Boeing Model 747 airplanes modified to have a stretched upper deck. This proposal would require repetitive inspections to detect cracks in certain upper deck floor beams, and repair of any cracks found, until reinforcement of those floor beams is

accomplished. This proposal is prompted by a recent report that certain floor beams fractured during fatigue testing. The actions specified by the proposed AD are intended to prevent failure of the floor beams, interference with the control cables, and reduced controllability of the airplane.

DATES: Comments must be received by May 18, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-38-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commerical Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2777; fax (206) 227-1181.

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 shall 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 92-NM-38-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. 92-NM-38-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report that the floor beams at Body Station (BS) 860, BS 840, BS 820, and BS 800 fractured during fatigue testing on a Boeing Model 747-400 series airplane. Further investigation revealed that the BS 860 upper deck floor beam fractured first. A metallurgical analysis of the BS 860 structure showed that cracks started in the upper chord of the BS 860 floor beam. The upper chord, fail-safe strap, and shear panel cracked at 20,000 test cycles. The BS 860 and BS 980 floor beams, which are just forward and aft of the upper deck stairwell, respectively, have similar design details. These floor beams surround a large cutout in the upper deck floor, and are critical to support pressurization loads and control cables. Although the BS 980 floor beam was restrained by the test fixture and did not crack during the fatigue test, analysis shows this floor beam should be reinforced similarly to the BS 860 floor beam. The structure around the stairwell is the same on Models 747-300 and -400, and Model 747 airplanes modified to have a stretched upper deck.

Failure of a floor beam could result in failure of the fuselage to sustain flight loads. This situation could result in interference with the control cables, and thereby reduce the controllability of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2327, dated December 5, 1991, that describes procedures for repetitive high frequency eddy current inspections to detect cracks in the BS 860 and BS 980 upper deck floor beams, and repair of any cracks found, until reinforcement of the BS 860 and BS 980 upper deck floor beams is accomplished. Reinforcement of the floor beams involves removing the existing strap, the failsafe strap, and a portion of the shear panel, and installing a new one-piece shear plate. This reinforcement procedure will reduce the stress levels and increase the fatigue life of these airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections to detect cracks of the BS 860 and BS 980 upper deck floor beams, and repair of any cracks found, until reinforcement of these floor beams is accomplished. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 202 airplanes of the affected design in the worldwide fleet, including Boeing Model 747-300 and 747-400 series airplanes and Boeing Model 747 airplanes modified to have a stretched upper deck. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2,344 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $40,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,040,560, or $168,920 per airplane.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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—AIRWORTHINESS DIRECTIVES

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:

Boeing: Docket 92–NM–38–AD.

Applicability: Model 747–300 and –400 series airplanes, and Model 747 series airplanes modified to have a stretched upper deck; as listed in Boeing Service Bulletin 747–53–2327, dated December 5, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane as a result of failure of the floor beams and consequent interference with the control cables, accomplish the following:

(a) Prior to the accumulation of 12,000 flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 2,000 flight cycles: Conduct a high frequency eddy current inspection of the Body Station (BS) 860 and BS 980 upper deck floor beams to detect cracks, in accordance with Boeing Service Bulletin 747–53–2327, dated December 5, 1991. If cracks are found as a result of these inspections, prior to further flight, repair in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Reinforce the BS 860 and BS 980 upper deck floor beams in accordance with Boeing Service Bulletin 747–53–2327, dated December 5, 1991, at the applicable time specified in subparagraph (b)(1) or (b)(2) of this AD:

(1) For Boeing Model 747–300 and –400 series airplanes: Prior to the accumulation of 20,000 flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Boeing Model 747 series airplanes modified to have a stretched upper deck: Prior to the accumulation of 20,000 flight cycles after incorporation of the stretched upper deck modification, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(c) Reinforcement of the upper deck floor beams, as required by paragraph (b) of this AD, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

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

(e) 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.

Issued in Renton, Washington, on March 17, 1992.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–7832 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD7–92–14]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Gasparilla Island residents and the bridge owner, the Coast Guard proposes to limit the number of openings during certain periods, of the Gasparilla Island Swingbridge, mile 34.3 at Placida. This proposal is being made to relieve back-to-back openings while still meeting the reasonable needs of navigation.

DATES: Comments must be received on or before May 21, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, FL 33131–3050, or may be delivered to Room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Iran MacCartney, Project Manager at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–14] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the above address. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lt. J. M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal. Gasparilla Island residents and the bridge owner have requested that the bridge be allowed to open only on the hour and half-hour between 10 a.m. and 3 p.m. daily to reduce traffic delays. A Coast Guard evaluation of the proposal concluded that highway traffic levels and frequency of bridge openings did not justify the proposed opening schedule. However, in order to eliminate back-to-back openings which create traffic congestion, a 15-minute opening schedule appears to be warranted.

Discussion of Proposed Amendments

The Coast Guard tested a 15-minute schedule between 10 a.m. and 3 p.m. daily from January 1 through February 28, 1992. The results indicated traffic backups were significantly reduced with the exception of afternoon commuter periods. The proposed rule extends the 15-minute schedule to cover the period from 10 a.m. to 5 p.m. daily. This schedule should eliminate back-to-back openings and help to reduce traffic delays without unreasonably impacting navigation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the Coast Guard must consider whether this proposal 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). Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges in categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Lists of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 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).

2. In § 117.287, paragraph (a–1) is redesignated as paragraph (a–2) and a new paragraph (a–1) is added to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(a–1) The draw of the Gasparilla Island Causeway drawbridge, mile 34.3, at Placida shall open on signal; except that from January 1 to May 30, from 10 a.m. to 5 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour.

* * * * *

Dated: March 19, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc 92–7751 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7 92–03]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is proposing to amend the regulations governing the Brooks Memorial (Southeast 17th Street) drawbridge, mile 1065.9, at Fort Lauderdale, by changing the opening schedule from a 15-minute closure period by use of time clock after each opening to an on the hour and half-hour opening schedule.

DATES: Comments must be received on or before May 21, 1992.

ADDRESSES: Comments may be mailed to Commander (oan) Seventh Coast Guard District, Bridge Section, Brickell Plaza Federal Building, 909 SE 1st Avenue, Miami FL 33131–3050, or may be delivered to Room 406 at the above address between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (305) 536–4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Bridge Section at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD7 92–03) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change the proposed regulations in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Brodie Rich at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. Brodie Rich, Project Manager, and LT J.M. Losego, Project Counsel.

Background and Purpose

This drawbridge opens on signal, except that, from 7 a.m. to 7 p.m., daily, the draw need not be reopened for a period of 15 minutes after each closure. The owner of or agency controlling the bridge is required to display on both sides of the bridge a time clock which is acceptable to the District Commander and which indicates to approaching vessels the number of minutes remaining before the draw is available for opening. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property are passed through the draw at any time. The Florida Department of Transportation (FDOT) initially requested changing the time clock from 15-minute closures to 30-minute closures after each opening. The Coast Guard tested this proposal from January 24, 1992 to February 9, 1992. The results of this test indicated that the extended closure would create unsafe navigational conditions. Therefore, the FDOT and the Coast Guard agreed to test bridge openings on the hour and half-hour from February 10, 1992 until April 24, 1992.

Discussion of Proposed Amendments

The Coast Guard's analysis of the 30-minute closures after each bridge opening indicated serious impacts on navigation due to uncertainty as to when the bridge would be opened. This resulted in increased vessel congestion on the north side of the bridge creating potentially unsafe holding conditions for vessels awaiting the next opening.

In addition, numerous complaints were received from highway users expressing concern that the variable closure schedule under the 30-minute

clock did not allow preplanning of trips across the bridge. Subsequently, initial analysis and public response to an opening schedule on the hour and half-hour has been favorable. Navigation and highway traffic levels during the test period have been lighter than a similar period in 1991, however, the hour and half-hour openings appear to have improved highway traffic flow while affording navigation and highway users an opportunity to plan their bridge transit times.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal 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 rule continues to exempt tugs with tows from delays caused by extending the closure periods. Therefore, because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

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).

PART 117—DRAWBRIDGE OPERATION REGULATIONS

2. Section 117.261 is amended by revising paragraph (hh) to read as follows:

117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

* * * * *

(hh) Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale. The draw of the Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale, shall open on signal; except that, from 7 a.m. to 7 p.m., the draw need open only on the hour and half-hour.

* * * * *

Dated: March 16, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 92–7755 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

System Certification Program Stage II Customer Requirements

AGENCY: Postal Service.

ACTION: Notice of proposed program.

SUMMARY: This notice describes the general requirements for Stage II of the System Certification Program. The System Certification Program (SCP) is a quality assurance program developed to ensure the ability of mailers to consistently prepare high quality mailings and to enhance the ability of the Postal Service to efficiently verify and accept those mailings. Stage I of the System Certification Program was previously implemented.

The program is designed to validate the quality and accuracy of a mailer's overall mailing operation, including the design of mailpieces, the quality of address information, presort and mail makeup, postage calculation, and postage payment. It has been developed with the built-in flexibility to evaluate and analyze new technologies as they are employed in mail production systems within the mailing industry. The evaluation procedures include analysis of mailer software and hardware systems that are used to presort mailings and to calculate postage payment, as well as other systems mailers employ in the production of mailings and related documentation (i.e., addressing systems, mailpiece design techniques, etc.). An integral element of the proposed requirements for SCP Stage II is the Vendor Presort Software Validation Program which will be published separately for public notice and comment in the **Federal Register.**

Once the Postal Service is ensured that a mailer's overall mailing system is capable of producing properly prepared mailings and accurately calculating postage, the Postal Service plans to certify the mailer's operation at Stage II of the SCP. This will entail a written agreement between the Postal Service and the mailer to ensure that the overall mailing system is properly maintained. The Postal Service then plans to provide simplified acceptance procedures for fully qualified mailings produced from the mailer's Stage II certified mailing system, expediting the mailing's induction into USPS mail processing and transportation systems.

After finalizing this program, as well as the separately published rule on Vendor Presort Software Validation, the Postal Service intends to publish step-by-step procedures for Stages I and II of the System Certification Program in a customer requirements publication tentatively titled A Mailer's Guide to the System Certification Program, which, after its completion, will be made available to customers upon request. In addition, appropriate changes are planned for the Postal Service's Handbook DM–102, Bulk Mail Acceptance and Handbook DM–108, Bulk Mail Acceptance Management Guide (which together establish USPS verification and acceptance procedures).

DATES: Comments on this proposed program must be received on or before May 15, 1992.

ADDRESSES: All written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza SW., room 8430, Washington, DC 20260–5903. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: George T. Hurst, (202) 268–5232.

SUPPLEMENTARY INFORMATION: The System Certification Program (SCP) is an integral part of the Postal Service's Corporate Automation Plan. Its ultimate goal is to maximize use of the automated capabilities of both the Postal Service and its customers while ensuring that mail of the highest quality is produced. SCP was one of the key proposals recommended by the joint Industry/USPS Worksharing Task Force in its final report dated November 1988.

The Postal Service has developed the program in a three-stage approach. Stage I has been implemented as previously noted, while the development of Stage III is ongoing. This notice concerns only Stage II procedures specifically, although comments on any facet of the program will be reviewed and evaluated.

Stages I and II of SCP have been developed to give the Postal Service and mailers reasonable, up-front assurance that mailings will be consistently prepared in accordance with postal requirements. As a result, the Postal Service believes that such mailings can be processed in the most efficient and cost effective manner and will have the highest potential for accurate and timely delivery. Because of this advanced assurance of mail quality, the Postal Service should be able to simplify bulk mail verifications on these mailings. SCP should make a significant contribution toward lowering Postal Service mail processing, delivery, and acceptance costs, because certified mailers will maintain more stringent quality controls in their mail production operations than many non-certified mailers and mail of consistently higher quality will be produced as a result. As part of the program, the Postal Service plans to conduct periodic audits of those mailers' systems that have been certified under the program to assure that quality standards are being maintained.

Participation in SCP may confer certain benefits to those mailers achieving Stage II certification. The program may assist those involved in reducing the combined customer and Postal Service cost of preparing and processing mail for delivery by ensuring all mailings are correctly prepared and will have the highest potential for accurate and timely delivery to addressees. Because the Postal Service intends to be able to simplify verifications of mailings produced from certified systems, acceptance procedures could be completed more quickly, reducing the time and potentially the amount of mailer involvement necessary during this process. The Postal Service also anticipates that certified mailers might enjoy certain competitive advantages as a result of being officially recognized by the Postal Service for the high quality of their mailing system operations. In addition, some mailers may be able to identify and improve certain system deficiencies in their existing operations as a consequence of the extensive self-evaluation and the Postal Service's stringent audits of their mailing system operation even though they may not immediately qualify for Stage II certification. At such time as Stage III is developed and implemented, with its greater reliance on automation and systems integration, mailers may be able to gain greater benefits.

The Postal Service plans to issue the customer SCP requirements in a publication tentatively titled A Mailer's Guide to the System Certification Program. This publication will describe the program and explain the steps mailers must take for full participation. Once completed, mailers currently involved in the program will automatically receive the guide when published. Other mailers will be able to receive a copy by contacting postmasters or their designees.

The following is a more detailed explanation of the System Certification Program which shows how Stage II fits in the program:

Stage I

Stage I requires documentation of a mailer's ability to conform to the requirements of a Postage Mailing System (Manifest Mailing Optional Procedure, or Alternate Mailing System) and provides for concurrent mailer certification at the time the postage mailing system is authorized. Outside the normal application for the postage mailing system, there is no special application required for Stage I certification. For a mailer to be certified, the Postal Service must be assured that mailings will be properly prepared for the postage rates claimed, correct postage amounts will be paid, mailings will be documented as required, and effective quality controls will be maintained in the mailing operation. The five USPS rates and classification centers (RCCs) are responsible, within the geographic territory they serve, for authorizing and administering postage mailing systems and certifying mailers at Stage I. The requirements for these systems are contained in Domestic Mail Manual (DMM) 145.7, 145.8, and 145.9 and related Postal Service publications.

The Postal Service anticipates that it will expand Stage I certification criteria in the future to cover those mailing systems that produce mail bearing metered postage or precanceled stamps.

Stage II

The proposed program will provide that mailer certification at Stage II of SCP will be contingent on the outcome of a comprehensive Postal Service validation audit, including a thorough review of a mailer's self-assessment documentation as well as onsite mailing system operation reviews. Two key segments are planned for Stage II certification: Mailpiece Certification and Presort Certification.

(1) Mailpiece Certification

Mailpiece Certification examines the developmental process and ongoing procedures used in the creation and review of the physical characteristics of a mailer's mailpieces, such as size, shape, weight and the accuracy, readability, and placement of printed information, such as permit imprint indicias, return addresses, markings, endorsements, facing identification marks, and barcodes. It requires mailers to designate certain employees to receive specialized training on mailpiece design and mailpiece characteristics. Mailpiece Certification will also examine the quality of the addressing information used by mailers or their clients to generate mailings.

The Postal Service is proposing to require that addresses in all lists used for fully qualified SCP mailings be processed with Coding Accuracy Support System (CASS) certified address matching software regardless of the postage rates claimed for the mailing. The Postal Service already requires that address lists by processed using CASS certified address matching software to qualify mailings for automation-based rates.

A quality control/job identification and tracking checklist procedure will be used as a way of identifying specific mailings which meet the criteria of SCP. This checklist procedure involves documenting individual mailings to

show to what degree they meet the program's quality standards. A properly completed SCP checklist is the basis for determining the type of verification that will be performed by Postal Service acceptance personnel.

(2) Presort Certification

Presort Certification will evaluate a mailing system to determine whether the following standards are met:

a. Adequate equipment and sufficient staffing of knowledgeable personnel are available to ensure compliance with postal regulations;

b. Mailpieces are produced that bear legible and properly formatted addresses;

c. Packages of mailpieces conform to postal presort regulations;

d. Trays, sacks, and pallets are made up in accordance with postal requirements;

e. Mailings are staged in a way that ensures accountability and loading to correct destinations; and

f. Mailings are loaded in accordance with proper safety procedures and vehicle load limits, and mailing identity is maintained as required by postal regulations.

As previously mentioned, plans call for mailers to perform a self-evaluation that focuses on mailpiece design, addressing information, quality control, and overall system reliability in producing mailings that comply with postal regulations before the Postal Service audit. The self-evaluation will indicate whether the mailer is ready to proceed with certification or needs to wait until improvements or enhancements have been made to the mail production system. The Postal Service intends to publish step-by-step guidelines to help mailers do this in the tentatively titled Mailer's Guide to the System Certification Program, along with information on other documentation requirements after finalizing this proposed rule.

In addition to providing the results of the self-evaluation, it is planned that mailers will be required to furnish the Postal Service with information that details how mailings are created, with particular emphasis on quality controls that affect the accuracy and reliability of postage calculations, presorting of mailpieces, and mailing statement preparation (e.g., a description of procedural safeguards used during the production stage for maintaining accurate piece weights and piece counts, presort accuracy, and mail makeup). All this information will be confirmed or validated when the Postal Service conducts an onsite audit of the mailer's mailing system. Mailer-provided information will be considered by the Postal Service along with all other available information when the final decision on certification is made.

Presort certification will include Postal Service validation of computer software if it is used to presort mailings. The Postal Service proposes employing a "test deck" for this purpose. A test deck is a data file created by the Postal Service that tests a mailer's software to determine whether it is capable of correctly sorting the address file for a specific mail class and rate category. The hardcopy printout generated by the mailer's computer will then be evaluated to see whether proper sortation has occurred. If a mailer presorts mailings using some method other than presort software, the Postal Service expects to devise an alternate means of evaluating it. An integral part of the Presort Certification element of the proposed requirements for SCP Stage II is the Vendor Presort Software Validation Program which will be published separately for public notice and comment in the **Federal Register**.

The Postal Service's proposed program will provide that the general manager, rates and classification center, will make the final decision on Stage II certification based on the results of the Postal Service's onsite validation audit of a mailer's overall mailing system and other pertinent information. After a mailer is certified, the Postal Service will conduct scheduled and unscheduled followup audits to ensure that SCP standards continue to be met.

Stage III

The Postal Service envisions that Stage III will include requirements to allow participants and the Postal Service to take advantage of the efficiencies to be gained from using a fully integrated, automated system with advanced automatic data processing capabilities to exchange data, documentation, payments, and other information electronically. It is further anticipated that Stage III will include an automated process control system that will allow the Postal Service to monitor ongoing mailing operations to determine whether SCP quality standards continue to be met.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rulemaking 5 U.S.C. 553(b), (c), the Postal Service invites public comments on Stage II of the System Certification Program. Comments on other aspects of the program are not specifically requested, but will be reviewed if submitted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-7794 Filed 4-3-92; 8:45 am]

BILLING CODE 7710-12-M

Notices

Federal Register
Vol. 57, No. 66
Monday, April 6, 1992

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.

ACTION

VISTA Literacy Corps Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; VISTA Literacy Corps Projects in Maryland, Ohio, Pennsylvania, and California.

ACTION Regions III and IX announce the availability of funds for fiscal year 1992 for new VISTA Literacy Corps grants authorized by section 109 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 92–113) in the States of Maryland, Ohio, Pennsylvania, and California. VISTA Literacy Corps grants will be awarded for up to a 12-month period.

Application packages and technical assistance on grant preparation are available from: Maryland—Jerry Yates, Maryland ACTION State Program Office, Federal Bldg., 31 Hopkins Plaza, room 1125, Baltimore, Maryland 21201, (410) 962–4443; Ohio—Paul Schrader, Ohio ACTION State Program Office, Leveque Tower, room 304A, 50 West Broad Street, Columbus, Ohio 43215, (614) 469–7441; Pennsylvania—Jorina Ahmed, Pennsylvania ACTION State Office, Gateway Bldg., 3535 Market Street, room 2460, Philadelphia, PA 19104, (215) 596–4077; California—Gayle Hawkins, California ACTION State Office, Federal Bldg., room 11221, 11000 Wilshire Blvd., Los Angeles, California 90024, (310) 575–7421.

This solicitation is available in alternate formats. Telephone requests for this document in an alternate format should be made to: Diana London, (202) 606–4824, or TDD number: (202) 606–5256.

Written requests should be sent to: Patricia Rodgers, ACTION/VISTA, 1100 Vermont Ave., NW., Washington, DC 20525.

A. Background and Purpose

Volunteers In Service to America (VISTA) is authorized under title I, part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of the VISTA program is to eliminate and alleviate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551) directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy, particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps encourages public/private partnerships; promotes voluntarism; heightens the visibility of the literacy issue; and increases the capacity of low-income communities to address their respective literacy needs.

Objectives

Literacy Corps grants can utilize VISTA Volunteers in emphasis areas such as:

1. Literacy projects which provide comprehensive services to curb the intergenerational transfer of illiteracy within low-income families by instructing parents and children together.
2. Literacy projects which focus on overcoming employment barriers by providing the unemployed and marginally employed with occupational literacy skills which make them more competitive within the labor force.
3. Literacy projects which focus on the needs of the learning disabled, the hearing impaired, the visually impaired, the mentally handicapped, and other persons with disabilities.
4. Literacy projects which provide English as a Second Language (ESL) to legalized aliens as well as those seeking amnesty under the Immigration Reform and Control Act of 1986.
5. Literacy projects which concentrate on preventive educational training for potential school dropouts and other low-income young adults who may be "educationally at risk".

Emphasis areas not identified above will receive equal consideration under this grant announcement.

B. Eligible Applicants

Eligible applicants for VISTA Literacy Corps grants include: public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and state education agencies; local and state agencies administering adult basic education programs; educational institutions; libraries; anti-proverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

C. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Literacy Corps Volunteer upon completion of his/her service.

The average Federal cost per volunteer service year, i.e. total Federal cost divided by total number of VISTA

volunteers, will range from $9,100 to $10,400 depending upon the location of the Volunteer's assignment. Specific budget guidance is available from the individuals identified in paragraph 2 of this announcement.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Corps grant in the areas of volunteer transportation, supervision, and/or in-service training.

This support can be achieved through cash or allowable in-kind contributions. In particular, there must be a 50% non-Federal match for the supervisor's salary and fringe benefits. The supervisor of the VISTA project must serve on at least a half-time basis.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps program.

D. General Criteria for Grant Selection

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951, et seq.) applicable to VISTA and all published regulations, guidelines and ACTION policies;
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government;
- Show that the goals, objectives, and volunteer tasks are within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result;
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementaiton of the VISTA project;
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project's efforts);
- Be designed to generate private sector resources and encourage local, part-time volunteer service;
- Have a permanent mechanism of self-evaluation;
- Provide frequent and effective supervision of the volunteers;
- Identify resources needed and make them available to volunteers to perform their tasks;
- Have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at zero to fourth grade levels;
- Those that focus on providing literacy services to high risk populations;
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk; and
- Statewide programs and projects that encourage the creation of new literacy efforts, encourage coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

E. Application Review Process

ACTION State Offices identified in paragraph 2 of this announcement and Regions 3 and 9 will review and evaluate all eligible applications from the State(s) within their jurisdiction prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office as noted in paragraph 2 of this announcement. The deadline for receipt of applications is 5 p.m. local time, Friday, June 6, 1992. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Program Grant Application (Form A–1421B) With a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Current resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. List of the members of the Board of Directors including their professional affiliations and literacy-related activities.

Signed at Washington, DC, this 31st day of March 1992.

Jane A. Kenny,

Director of ACTION.

[FR Doc. 92–7812 Filed 4–3–92; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

Public Law 88–482 enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0201.10.00, 0202.02.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat

articles prescribed for calendar year 1990 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the notice published in the **Federal Register** on January 7, 1992 (57 FR 553), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1992 is 1,192 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1992 is 1,286 million pounds.

Done at Washington, DC this 31st day of March, 1992.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92-7800 Filed 4-3-92; 8:45 am]

BILLING CODE 3410-10-M

Federal Grain Inspection Service

Designation of the Michigan (MI) Agency to Provide Official Services at Countrymark Cooperative, Inc., and Peavey Elevator, Carrollton, Michigan (MI)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Michigan Grain Inspection Services, Inc. (Michigan), to provide official grain inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: May 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 25, 1991, **Federal Register** (56 FR 55268), FGIS announced that because of the absence of export grain shipments, Countrymark Cooperative, Inc., and Peavey Elevator at Carrollton, Michigan, had asked that FGIS no longer recognize these elevators as export elevators at export port locations, but view the elevators as domestic grain elevators at which official services would be provided by a designated official agency. FGIS asked persons interested in providing official services at these elevators to submit an application for designation to provide such services. Applications were to be postmarked by November 25, 1991.

The Michigan and Detroit Grain Inspection Services, Inc., are both currently designated official agencies and the only eligible applicants, and each applied for designation to serve the entire available geographic area. FGIS named and requested comments on the applicants in the February 4, 1992, **Federal Register** (57 FR 4183). Comments were to be postmarked by March 5, 1992. FGIS received eight comments by the deadline from firms currently served by Michigan or in the geographic area assigned to Michigan. Five firms supported designation of Michigan based on good service and cost efficiency. Two of the positive commenters were grain firms in the geographic area open for designation. The remaining three firms, outside the geographic area being designated, expressed concern regarding the timeliness of service in the area currently being served by Michigan and suggested that another applicant be designated.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Michigan is better able than any other applicant to provide official inspection services in the geographic area for which they applied.

Effective May 1, 1992, and ending upon the conclusion of their current designation (April 30, 1995), Michigan is designated to provide official grain inspection at Countrymark Cooperative, Inc., and Peavey Elevator, Carrollton, Michigan. Michigan's designation is amended by authorizing them to serve these elevators.

Interested persons may obtain official services by contacting Michigan at 616-781-2711.

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

Dated: March 30, 1992.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 92-7765 Filed 4-3-92; 8:45 am]

BILLING CODE 3410-EN-F

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that an informal factfinding meeting of the Connecticut Advisory Committee to the Commission will be convened at 9 a.m. on Monday, April 27, 1992, in the Keller Auditorium of the University of Connecticut Health Center, 263 Farmington Avenue, Farmington, Connecticut, and adjourn about 4:15 p.m.

The purpose of the meeting is to discuss ways of reducing campus tensions associated with racial or religious prejudice in a forum involving panels of students, administrators, and faculty members. The morning session will open with a statement by the Commissioner of the Connecticut Board of Higher Education, other experts, and panels from the University of Connecticut at Storrs. The afternoon session will involve panels from Wesleyan University.

Persons desiring additional information or wishing to address the Committee during the meeting should contact Committee Chairperson Ivor J. Echols (202/688-2009) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, March 30, 1992.

Carol-Lee Hyrley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-7773 Filed 4-3-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Iowa Advisory Committee to the U.S. Commission on Civil Rights will meet on April 29 through May 1, 1992 in Dubuque, Iowa. The meeting will be held on April 29 from 6 p.m. until 9 p.m. at the Clarion Hotel, 420 Main Street, and on April 30 and May 1 from 8 a.m.

until 6 p.m. at the Dubuque Five Flags Center, 4th & Main in Dubuque. The purpose of the meeting is to obtain information on race relations in Dubuque.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TTY 816–426–5099). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 31, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–7774 Filed 4–3–92; 845 am]

BILLING CODE 6335–01–M

Agenda of Public Meeting to the New Jersey State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey State Advisory Committee will convene at 10:30 a.m. and adjourn at 2:30 p.m. on Monday, April 27, 1992, North Brunswick Municipal Government Center, 710 Hermann Road, North Brunswick, NJ 08902. The purpose of the meeting is program planning and review of project report.

Persons desiring additional information, or planning a presentation to the Committee, should contact John I. Binkley, Director, ERD at (202/523–5264); or TDD (202/3376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 31, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–7775 Filed 4–3–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 571]

Berg Steel Pipe Corp., Foreign-Trade Zone 65, Panama City, FL; Approval With Restriction Extension of Manufacturing Authority

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Panama City Port Authority (PCPA), Grantee of Foreign-Trade Zone (FTZ) 65, Panama City, Florida, applied to the Board for an indefinite extension of Berg Steel Pipe Corporation's (BSPC) authority to use zone procedures for its steel pipe manufacturing opertions at its plant within FTZ 65;

Whereas, the application was accepted for filing on May 30, 1990, and notice inviting public comment was given in the **Federal Register** on June 13, 1990 (Docket No. 21–90, 55 FR 23955);

Whereas, BSPC was given authority to manufacture pipe in FTZ 65 for a period of five years when the zone was approved in 1981 (Board Order 171, 46 FR 8072);

Whereas, BSPC's authority to manufacture under zone procedures has been extended three times, the last extension to March 31, 1992 (Board Order 490, 5 FR 40697);

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to a restriction;

Now, Therefore, the Board hereby orders that BSPC is authorized to use zone procedures for its steel pipe manufacturing operations in FTZ 65 subject to a restriction requiring that any foreign steel mill product admitted to the BSPC zone operation shall be subject to the same restrictions and requirements relating to special government agreements or programs as are applicable to steel products entered directly into U.S. Customs territory from abroad, and subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 30th day of March 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–7840 Filed 4–3–92; 8:45am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–504]

Erasable Programmable Read Only Memories From Japan; Final Scope Ruling

AGENCY: International Trade Administration/Import Administration; Department of Commerce

ACTION: Final scope rule.

SUMMARY: On December 12, 1991, the Department of Commerce published in the **Federal Register** (56 FR 64743) its preliminary scope ruling that certain Flash memory devices based on Erasable Programmable Read Only Memory (EPROM) semiconductor technology are later-developed products within the scope of the suspended investigation and suspension agreement on EPROMs from Japan. We notified the International Trade Commission of our proposed inclusion of certain Flash Memories within the scope of the existing suspension agreement and provided interested parties an opportunity to comment on our preliminary ruling.

After our analysis of the comments received, the Department of Commerce reaffirms its preliminary scope ruling that certain Flash Memories are within the scope of the suspended investigation and suspension agreement.

EFFECTIVE DATE: April 6, 1992.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–4851.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 64743) a preliminary

scope ruling that certain Flash memory devices based on EPROM semiconductor technology are later-developed products within the scope of the suspended investigation and suspension agreement on EPROMs from Japan. On December 4, 1991, we notified the International Trade Commission (ITC) of our proposed inclusion of certain Flash Memories within the scope of the existing suspension agreement and provided interested parties an opportunity to comment on our preliminary ruling.

On January 13, 1992, NEC Corporation, Toshiba Corporation, Mitsubishi Electric Corporation, and Hitachi, Ltd. (respondents) submitted comments opposing our preliminary ruling and Intel Corporation, Advanced Micro Devices, and National Semiconductor, Inc. (petitioners) submitted comments in support of our preliminary ruling.

On January 28, 1992, the ITC responded to our notification of intent to include a later-developed product within the scope of the suspended investigation and advised the Department that consultations were not necessary in this case.

The Department has now completed this inquiry in accordance with section 781(d) of the Tariff Act of 1930, as amended (the Act).

Product Coverage

In their May 30, 1991 scope clarification request, petitioners identified the merchandise subject to their request as the Flash memory EPROMN (FLASH). Petitioners stated that EPROMs and FLASH are produced from the same technology. Petitioners added that Flash devices based on electrical EPROM (EEPROM) technology—which uses a less dense, two transistor cell structure—are much more costly, do not compete with the same applications as FLASH and, therefore, such devices were not included in the scope clarification request.

The terms EPROM, EEPROM, E²PROM, Flash Memories, Flash EEPROM, Flash E²PROMs, Flash EPROM, and FLASH appear throughout this determination. In an attempt to provide clarification, the Department hererin defines the various terms:

EPROMs—erasable programmable read only memories;

EEPROMs and E²PROMs—electrically erasable programmable read only memories;

Flash Memories—Flash devices based on eighter EPROM or EEPROM technology;

Flash EEPROM and Flash E²PROMs—Flash devices based on EEPROM technology; and

Flash EPROM and FLASH—Flash devices based on EPROM (one Transistor) technology.

Analysis of Comments Received

We invited interested parties to comment on our preliminary ruling. We received comments from the petitioners and the respondents. Although requested by respondents, we did not hold a public hearing in this matter.

Comment 1

Respondents argue that the language of the statute and the regulations give the Department the authority to clarify the scope of antidumping duty orders, not suspension agreements and suspended investigations. Accordingly, respondents argue that the Department is precluded from clarifying the scope of a suspended investigation based on the criteria of § 353.29 of the Department's regulations.

DOC Response

We disagree. The Department renders a formal determination when it suspends an antidumping or countervailing duty investigation. This determination is memorialized in a suspension agreement which, in the case of EPROMs, is designed to eliminate completely sales at less than foreign market value. The suspension agreement, by eliminating the prospect of sales at less than foreign market value, obviates the need for the Department to issue an antidumping duty order by functioning in place of that order. Indeed, from an administrative standpoint, there is little difference between a suspended investigation/suspension agreement and an investigation which results in an order. Both orders and suspended investigations must be administered by the Department, both are subject to section 751 administrative reviews, and both are subject to scope inquiries.

Moreover, contrary to respondents' assertions, nothing in the statute or regulations preclude the Department from clarifying the scope of a suspended investigation. As stated by the Court of International Trade in Royal Business Machines, the Department possesses the inherent authority to clarify the scope of antidumping and countervailing duty orders. *Royal Business Machines* v. *United States*, 570 F. Sup. 1007 (Ct. Int'l Trade 1980), *aff'd*, 669 F.2d 691 (Fed. Cir. 1982). Section 781 of the Act and section 353.29 of the Department's regulations (19 CFR 353.29 (1991)) specify the criteria by which the Department clarifies the scope of suspended investigations as well as orders. As a practical matter, suspension agreements are in force for many years. Over time, it may be impossible for the Department to objectively determine whether a product is within the scope of the suspended investigation without relying on the criteria specified in section 781 of the Act and section 353.29 of the Department's regulations. Finally, even assuming, *arguendo*, (which we do not) that a suspended investigation is no different than a normal investigation, the Department possesses the authority to define or clarify the scope of an investigation. *Mitsubishi Electric Corp.* v. *United States*, 700 F.Supp. 538, 552 (Ct. Int'l Trade 1988), *aff'd*, 898 F.2d 1577 (Fed. Cir. 1990) (additional citations omitted). For the foregoing reasons, the Department properly relied on the criteria set forth in section 353.29(h) of the Department's regulations to determine whether Flash EPROMs are within the scope of the suspended investigation on EPROMs from Japan.

Comment 2

Respondents argue that the suspension agreement includes only EPROMs from Japan, and does not include "other merchandise of the same class or kind." Accordingly, respondents contend that it would be contrary to the terms of the suspension agreement to include Flash EPROMs within the scope of the suspended investigation.

DOC Response

Respondents' contentions are without merit. The Department conducts an investigation on a class or kind of merchandise. See section 731 of the Act (19 U.S.C. 1673). Accordingly, when the Department suspends an investigation, the suspension applies to the class or kind of merchandise subject to investigation. This includes the specific existing products identified in the Department's notices as well as other merchandise which is of the same class or kind but may not have been specifically identified at the time of the investigation. The Department does not have the authority to limit a suspended investigation in such a manner as to exclude merchandise of the same class or kind from the scope of a suspension agreement. Nevertheless, respondents suggest that Flash EPROMs are not covered by the suspension agreement even if they are determined to be the same class or kind of merchandise as EPROMs. First, as noted above, the antidumping investigation on EPROMs from Japan (and the ensuring suspension agreement) as a matter of law must include other merchandise of the same class or kind. See section 731 of the Act Second, as a matter of fact, the EPROM investigation and ensuring suspension

agreement included other merchandise of the same class or kind. See 51 FR 28253, August 6, 1986 (notice of suspension of investigation). Applying respondents' logic, we would be required to issue an antidumping order on Flash EPROMs because it is the same class or kind of merchandise as EPROMs but is not subject to the suspension agreement. This result is not only illogical but is contrary to the provisions of section 734 of the Act and to the results intended by the parties. Finally, as explained in our response to comment one, the Department possesses the authority to clarify the scope of a suspended investigation and, in this case, we have concluded that Flash EPROMs are within the scope of the suspended investigation on EPROMs from Japan.

We also note that respondents cite to nothing in the record which supports their contention that other merchandise of the same class or kind was specifically excluded from the amended EPROMs suspension agreement. Our review of the record reveals that no evidence exists to support this argument. At most, it appears that the language "other merchandise of the same class or kind" was inadvertently omitted from the first paragraph of the product coverage section of the revised EPROM suspension agreement. Moreover, contrary to respondents assertions, the language of the suspension agreement indicates that other merchandise of the same class or kind is included within the suspended investigation. Specifically, the second paragraph of the product coverage section notes that processed wafers and dice produced in Japan and assembled into finished EPROMs, or other merchandise of the same class or kind, in another country is included within the scope of the agreement. See 56 FR 37523, 37524, August 7, 1991. It would be inconsistent, to include other merchandise of the same class or kind in this content if such merchandise was not also included when directly exported to the United States from Japan.

Comment 3

Respondents argue that U.S. antidumping law and Article VI of the General Agreement on Tariffs and Trade (the GATT) bar the Department from including Flash EPROMs in the scope of the suspended investigation because no injury determination was made with respect to imports of electrically erasable memories.

DOC Response

We disagree. As explained in detail in our preliminary ruling, the ITC investigation did not cover E²PROMs—Flash EPROMs were not specifically included or excluded from the scope of the ITC investigation. Normally, if a product satisfies the criteria specified in § 353.29(i) of the Department's regulations it is presumed that the merchandise is covered by the ITC's injury finding. However, in the case of later-developed products (which could not have been considered by the ITC), the statute requires the Department to notify the ITC of the proposed action. The statute also provides for consultations and for provision of written advise by the ITC in cases which raise a significant injury issue. On December 4, 1991, we notified the ITC of our intent to find that flash EPROMs are included within the scope of the suspended investigation on EPROMs from Japan and provided the ITC with our preliminary scope ruling. On January 28, 1992, the ITC informed us that it "does not believe that consultations between Commerce and the [ITC] are necessary." Accordingly, we conclude that the Flash EPROM is covered by the ITC's injury finding and its inclusion within the scope of the suspended investigation is consistent with both U.S. law and Article VI of the GATT.

Comment 4

Respondents argue that it is clear from a review of product descriptions from the original investigation that E²PROMs were excluded from the original investigation and that no mention was made of carving out particular categories of electrically erasable products. Respondents assert, therefore, that all electrically erasable products are forever excluded from the scope of the suspended investigation.

DOC Response

We disagree. Neither the petition nor the determinations of the Department and the ITC excluded all electrically erasable devices from the scope of the original investigation. As detailed in our preliminary ruling and as set forth below, E²PROMs were not included within the scope of the original investigation because of their differences in structure and technology relative to EPROMs. Flash Memories, which have the same structure and employ the same technology as EPROMs, were not excluded from the original investigation.

With regard to the petition, we are not persuaded by respondents' assertion that electrically erasable devices were excluded from the petition because such devices are not erased by ultraviolet light. Rather, we find that E²PROMs were not included within the scope of the petition on the basis that "[t]hese newer devices do not compete with EPROM yet because of *higher costs*." (Petition, September 30, 1985, at 9, fn. 2, emphasis added.) See also Preliminary Scope Ruling, 56 FR at 64747 ("The petitioners' definition of EPROMs did not include E²PROMs' because E²PROMs' high prices rendered them uncompetitive with [E]PROMs"). Further, the ITC, in its like product determination, stated that "[b]ecause of their more complicated technology, EEPROMs are *significantly more expensive* than EPROMs." (*See Erasable Programmable Read Only Memories from Japan*, USITC Publication 1927, December 1986, at 9, emphasis added.) See also Preliminary Scope Ruling 56 FR at 64747 ("Because the E²PROM's complicated technology and consequent high cost prevented it from competing with the EPROM, the Commission classified it as a separate like product").

Moreover, despite the extensive consideration of the appropriate class or kind of merchandise during the original less than fair value investigation, nowhere on the record did the respondents or petitioners assert, or did the Department determine, that E²PROMs, because of their electrically erasable feature, were a different class or kind of merchandise than EPROMs. Rather, in this case, the Department adopted the definition of the subject merchandise as identified in the petition.

Finally, we note that the ITC's determination of like product is not dispositive of class or kind. Rather, the ITC's like product determinations are often times narrower than the Department's class or kind determinations. (See for example, Industrial Belts from Israel, Italy, Japan Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, USITC Publication 2194, May 1989, at 3, in which the Department found one class of merchandise—industrial belts and the ITC found three like products—v-belts, synchronous belts, and round belts.) Therefore, we conclude that the fact that the ITC found E²PROMs to be a different like product from EPROMs is not dispositive as to whether E²PROMs or Flash Memories (whether based on one or two transistor cell technology) are the same class or kind of merchandise as EPROMs.

Comment 5

Respondents argue that despite petitioners' efforts to create a distinction among Flash Memories based on cell structure (a distinction that allegedly overwhelmingly contradicted by the facts, market reality, and industry standards), evidence demonstrates that Flash Memories constitute one product class that includes all electrically erasable devices. In support of the assertion that Flash Memories constitute one product class, respondents state that the industry does not define or categorize products according to their manufacturing processes, their outward physical appearances, or their transistor structure or size—but rather according to their functionality. Respondents add that the Joint Electron Device Engineering Counsel ("JEDEC"), which establishes the standards used by the industry, expressly defines EPROMs and E²PROMs according to their method of erasure. Based on these definitions, the industry, through JEDEC, has expressly classified all Flash memory devices as types of E²PROMs.

DOC Response

We disageee with respondents' assertion that all Flash Memories, because they are electrically erasable, are the same as E²PROMs. Rather, we find that, similar to the distinction made between EPROMs and E²PROMs during the original investigation, there is a recognized distinction between Flash Memories and E²PROMs .

We agree that there is no dispute that Flash Memories (both one and two transistor cell-based devices) are electically erasable read only memory. We are not, however, persuaded by respondents' arguments that because E²PROMs and Flash Memories are both electrically erasable, they are a class or kind of merchandise different from EPROMs. The fact that JEDEC, for its own purposes, differentiates EPROMs from Flash Memories and E²PROMs because EPROMs are not electrically erasable whereas both Flash Memories and E²PROMs are electrically erasable, is not dispositive of class or kind for the Department's purpose. As we explained in our response to Comment 1, the Department relies on the criteria specified in section 781 of the Act and section 353.29 of the Department's regulations in determining the scope of orders and suspended investigations.

Further, the information provided by respondents indicates that the industry does in fact recognize a distinction between Flash Memories and E²PROMs. In their submissions, respondents provided a variety of articles discussing Flash devices. (See for example, "Store Data in a Flash", BYTE, November 1990, at 311; "Do You Remember?", BYTE, November 1990, at 312; "How Seeq is Pushing EEPROMs to 1–Mb Densities". Electronics, August 21, 1986, at 53; "High Demand, Low Price Brighten Flash-Memory Market", Electronic Business, October 29, 1990, at 86.) Many of these articles refer to the various erasable programmable read only memories as: EPROMs, Flash EEPROMs, and full EEPROMs, thereby distinguishing not only between UV [ultraviolet] erasability and electrical erasability, but also between Flash electrical erasability, but also between Flash electrical erasability and electrical erasability. Further, these articles state that Flash Memory combines the technology and functionality of, and therefore the advantages of, ultraviolet-erasable EPROMs and floating-gate EEPROMs. These articles emphasize the fact that Flash Memories are made with the same processes as EPROMs and are therfore, price competitive with EPROMS—and considerably lower priced than comparable two-transistor EEPROMS.

Although respondent argue that the only importance of Flash devices is their electrical erasability and, therefore, that we must determine that all electrically erasable devices are the same class of merchandise, it is evident that the industry recognizes an important distinction between Flash Memories and EEPROMs. Even respondents recognize that the Flash Memory is not an EEPROM. (See Hitachi comments, July 25, 1991, at 2.)

Comment 6

Respondents state that all parties agree that Flash Memories were publicly known at the time of the original investigation and therefore, because certain Flash Memories were in existence during the original investigation, the Flash product class cannot be considered later-developed. In support of their contention that Flash Memories were publicly known at the time of the original investigation, respondents state that the Flash Memory was invented by Toshiba in 1984 and was trademarked the "Flash EEpROM" by Toshiba (Hitachi comments, July 25, 1991, at 2) and that Toshiba's Flash EEPROM was invented and developed in the 1970's and was first discussed publicly in December 1984 (Toshiba comment, July 25, 1991). Respondents point to a paper prepared by the Integrated Circuit Division of Toshiba Corporation, "New Flash EEpROM Cell Using Polysilicon Technology", Toshiba IEDM 84, as offering evidence that Flash Memories were "developed" at the time of the original investigation. Further, respondents state that petitioners were aware of the existence of Flash Memories based on numerous press reports, prior to the filing of the petition, which describe Flash Memories. As evidence, respondents provided the Department numerous articles discussing Flash Memories.

DOC Response

In determining whether Flash EPROMs are appropriately considered later-developed products under section 781(d) of the Act, we evaluated respondents' arguments in light of the language of the statute, regulations, and applicable legislative history. We conclude that if Flash EPROMs were developed after the initial investigation, the Department must analyze Flash EPROMs based on the criteria contained in § 353.29(h) of the Department's regulations, which governs later-developed product scope determinations. A product developed after the petition and investigation cannot have been specifically excluded from the scope. Accordingly, if Flash EPROMs are later-developed, the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the ITC cannot be dispositive.

As the Department noted in its October 29, 1991, preliminary scope ruling clarifying the scope of the antidumping duty order on electrolytic manganese dioxide from Japan (See 56 FR 56977, November 7, 1991), the Department first examines the petition and determinations of the Department and the ITC to see whether the product under consideration was developed at the time of the original investigation.

As discussed in the Department's response to Comment 4 above, the petition and determinations of the Department and the ITC referred to the E²PROMs in existence at the time of the original investigation. The Department and the ITC did not consider, and were not asked to consider, Flash Memories (whether based on EPROM or EEPROM technology) in their investigations. Moreover, the determinations of the Department and the ITC do not conclusively establish whether Flash Memories (whether based on EPROM or EEPROM technology) were developed at the time of the original investigation.

Contrary to respondents' assertion, the fact that some Flash memory devices were publicly known at the time of the original investigation is not dispositive

of whether Flash memory devices can be considered a later-developed product for purposes of section 781(d) of the Act. The Department finds that the evidence supports the conclusion that Flash Memories were being developed at the time of the original investigation. For example, several articles submitted by respondents note that as late as 1990 "many of the technical and cost questions that plagued flash technology during its early development are now being resolved, yet certain barriers to commercial success must still be removed" (See "High Demand, Low Price Brighten Flash-Memory Market," Electronic Business, October 29, 1990, at 86). Further, numerous technical articles submitted by respondents demonstrate that technical papers on Flash Memories continue to be submitted well after the filing of the petition. (See for example, NEC comments, July 25, 1991, at exhibits 16, 17, and 18.)

Additionally, although respondents elsewhere argue that the European Community decision on EPROMs is meaningless in the current context, we find some of the EC's comments instructive with respect to whether Flash EPROMs are appropriately considered later-developed products. Specifically, while the EC's investigation of EPROM dumping covered the period April 1986 to March 1987, the EC noted, in its like product determination that *[a]fter the investigation period,* a new product variation, so-called 'Flash' EPROMs, started to come onto the market." (See Official Journal of the European Communities, 12.3.91, at 65/2 and 65/4.) The fact that the Council noted that Flash EPROMs started to come on to the market after its investigation, an investigation not only begun after the October 1985 filing of the U.S. petition, but also covering a time period after the Department's March 1986 preliminary affirmative determination, indicates that despite respondents' assertion that Flash Memories were publicly known at the time of the original U.S. investigation, Flash Memories (either based on EPROM or EEPROM technology) were not "developed" for purposes of section 781(d) of the Act.

Although Flash E²PROM technology was publicly discussed prior to the initiation of the original investigation, the evidence on the record in this proceeding supports the conclusion that Flash Memories remained in development at the time of the original investigation. Therefore, we reaffirm our preliminary ruling that certain Flash memory devices are later-developed products within the meaning of the statute. As a result, we determine that an analysis using the criteria set forth in § 353.29(h) of the Department's regulations governing later-developed product determinations is appropriate.

Comment 7

Respondents argue that even if it were appropriate to analyze Flash Memory as a later-developed product, Flash is clearly a different class or kind of merchandise from EPROMs.

DOC Response

We disagree. As detailed in our responses to comments 8 through 12, we find that Flash EPROMs are the same class or kind of merchandise as EPROMs and, therefore, are within the scope of the suspended investigation and suspension agreement on EPROMs from Japan. Comments 8 through 12 (and the Department's responses thereto) address the criteria set forth in § 353.29(h) of the Department's regulations: The general physical characteristics of the merchandise; purchaser expectations; end use of the merchandise; channels of trade; and manner of advertisement.

Comment 8

With respect to physical characteristics, respondents argue that the Department understated the physical differences between EPROMs and one transistor Flash Memories while overstating the similarities. Respondents state that structural and technical features of Flash Memories, including gate oxide thickness, Fowler-Nordheim tunneling, erase control and other circuitry on the chip, larger die size, and different packaging, demonstrate that there are significant physical differences between one transistor Flash Memories and EPROMs. According to respondents, these differences, which are related to electrical erasability, result in significant differences in cost and price.

Respondents also argue that generic similarities between Flash and the EPROM do not provide justification for the Department's preliminary scope ruling. Respondents state that the fact that one transistor Flash Memories evolved from EPROM technology is an unpersuasive basis for inclusion because the same is true about two transistor Flash Memories and E²PROMs. Further, respondents state that the Department's determination that the floating gate was the primary technological/structural similarity between Flash and EPROMs is an equally unpersuasive basis for inclusion because two transistor Flash Memories, as well as E²PROMs, contain a floating gate for memory storage.

DOC Response

As we stated in our preliminary determination, the differences in physical characteristics between EPROMs and Flash EPROMs are not so significant as to result in a determination that these devices, in light of the similarities in uses and expectations, are not the same class or kind of merchandise.

Additionally, the Department does not consider gate oxide differences between Flash EPROMs and EPROMs to be significant. We recognize that there are differences between EPROMs and Flash EPROMs. However, the gate oxide and tunnelling differences between EPROMs and Flash EPROMs do not merit the exclusion of the Flash EPROM from the scope of the suspension agreement. The two devices are fundamentally similar in their design. As noted in several of the articles submitted by respondents, the Flash EPROM is produced using EPROM production processes. Further, we note that the overall scaling of EPROM architecture has culminated in the successful production of thin gate oxide which allows for electrical erasability via Fowler-Nordheim tunneling. Of particular relevance is the graph entitled "EPROM Technology Development," which charts the precipitous decline in the thickness of gate oxide utilized in petitioner's EPROMs. In petitioner's EPROM, from 1971 to 1991, for example, gate oxide thickness has fallen from 1,200 angstroms to 100 angstroms. (*See* Memo to File, September 12, 1991.)

Electrical erase circuitry is incorporated into the Flash EPROM primarily to prevent overerasure. The danger of overerasure in the Flash EPROM must be prevented through the construction of electrical erase control circuitry specifically because petitioners chose EPROM-based architecture, (*i.e.*, one transistor cell), for their Flash EPROM. (See 56 FR at 64745.)

Although incorporation of electrical erasure circuitry necessitates additional silicon, Flash EPROMs remain considerably smaller than E²PROMs. In addition, as we discuss below, petitioners have projected that their 8Mb Flash EPROM die will be smaller than their 8Mb EPROM die.

Respondents correctly observe that EPROMs are housed in windowed, ceramic packages, whereas, Flash Memories are housed in plastic packages. Respondents fail to acknowledge, however, that OTPs are housed in the same packages as Flash EPROMs. The OTP was included within the scope of the original suspended

investigation for reasons enumerated in our preliminary determination. The difference in packaging between EPROMs and OTPs, in light of the other salient similarities between EPROMs and OTPs, was clearly not significant enough to merit its exclusion from the scope of the suspension agreement. Similarly, the packaging differences between Flash EPROMs and EPROMs, in light of the salient structural similarities between the Flash EPROM and the EPROM, are not significant enough to merit its exclusion from the scope of the suspension agreement. (*Id.* at 64747 and 64748).

Although the product specifications of Flash EPROMs result in extra cost, industry sources correctly predict that these costs will decline as mass production of Flash EPROMs begins.[1] Respondents fail to acknowledge that all semiconductor products progress through an inversely-related price/time continuum in which costs decrease as production increases. Petitioners predict that the price of Flash EPROMs will fall below the price of EPROMs at the 8Mb level:

> [A]t the 8Mb generation, Flash EPROMs will have a smaller die size than traditional UV EPROMs, a factor which will render Flash EPROMs less costly than UV EPROMs. (Petitioners, August 9, 1991, at 19.)

Finally, the Department does not believe that significant physical differences exist between the Flash EPROM and the EPROM. A comparison of the design of a Flash EPROM and an EPROM cell reveals their essential similarity. The cell's structure is important because it affects the cost and functions of the particular non-volatile, rewritable semiconductor product. Two transistor cell designs are utilized in order to provide byte-alterability, an ability that neither Flash EPROMs nor EPROMs possess.[2] Two transistor cell structures are also less dense and therefore more costly than one transistor cell structures. As we explained above, Flash EPROM die sizes are predicted to equal EPROM die sizes at the 8Mb level. At this density, Flash EPROM prices are predicted to drop below EPROM prices.

It is clear that erasable Flash EPROMs should be considered the direct descendants of EPROMs. The following citation that we include in our preliminary determination remains strikingly opposite.

> The most important underlying characteristic of flash memories is that they're a derivative of EPROM, *not E²PROM or static RAM, technology*. (Computer Design, March 1, 1989 at 30.) (Emphasis added.)

Comment 9

Respondents argue that Flash Memories (both one and two transistor cell types) are currently used for completely different end uses than EPROMs. Respondents further argue that the different end uses demonstrate that Flash Memories are not simply a better EPROM, but that they are a separate and distinct class or kind of merchandise. Respondents argue that these applications—replacing the floppy disk, the hard disk drive, and E²PROMs, as well as being poised to replace dynamic random access memories (DRAMs)—demonstrate the absurdity of the Department's preliminary ruling that Flash Memories' electrical erasure component is simply an improvement of an ancillary feature. Respondents state that the following uses currently exist for Flash: (1) Flash Memories, in the form of Flash Memory Cards, are replacing the floppy disk; (2) Flash Memory cards are also replacing the hard disk drive; (3) Flash Memories are also replacing E²PROMs in areas where on-board and remote reprogramming are important; and (4) Flash Memories are poised to replace DRAMs when their prices and densities become competitive.

DOC Response

We disagree. While Flash EPROMs are replacing different storage media in certain applications, more tellingly, Flach EPROMs are currently replacing EPROMs. Respondents do not deny that Flash EPROMs are substituting for and replacing EPROMs. Rather, they confuse the issue by arguing that Flash EPROMs are replacing other memory devices. In fact, Flash EPROMs provide users the same thing that EPROMs do—erasable (albeit electrically) programmable read only memory.

As EPROM manufacturers begin to discontinue EPROM production at higher densities because of erasure difficulties associated with UV EPROMs, they will substitute Flash EPROMs for end uses previously fulfilled by EPROMs. Substitution of Flash EPROMs for UV EPROMs has already begun to occur. Respondents included a chart that clearly reveals that Flash EPROMs can replace UV EPROMs in 56% of UV EPROMs' applications. This supports the Department's determination that the Flash EPROM is replacing the UV EPROM. As the Flash EPROM becomes increasingly price competitive, buyers will clearly choose a Flash EPROM rather than an EPROM.

The Flash EPROM is an EPROM that can achieve what its prototype and ancestor (the EPROM) could not: Low cost, high density, non-volatility, and easy bulk rewritability. The original EPROM failed on the last specification, namely, easy bulk rewritability. The Flash EPROM, conversely, satsfies all four criteria. Flash EPROMs and EPROMs mimic magnetic media, except Flash EPROMs and EPROMs benefit from solid-state anatomy. Because of the shortcomings of UV erase EPROMs, electrical erase EPROMs are making the UB EPROM obsolete. The UV EPROM's obvious successor is the Flash EPROM.

We also note that neither the EPROM, nor the Flash EPROM, in situtations where byte-alterability is required, can replace byte-alterable E²PROMs, DRAMs, or static random access memories (SPAMs). In contrast, a Flash E²PROM that is capable of byte-erase and can be produced cheaply at high densities could replace a DRAM.

Comment 10

Respondents argue that erasability, not non-volatility, is Flash Memory's primary use. Respondents state that while non-volatility is not an insignificant feature, it is not the primary feature as is apparent from the end uses of Flash. Further, respondents state that the end uses of Flash Memories have in common the requirement of electrical erasability; nonvolatility is an added bonus.

DOC Response

It is clear that the provision of electrical erasability without non-volatile storage capacity would not be noteworthy. The singularly definitive and innovative aspect of the Flash

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[1] A further factor offsetting the higher cost of the Flash EPROM is its plastic windowless packaging which is significantly cheaper than the EPROM's.

[2] In their submission of January 13, 1992, respondents argue that the number of transistors contained in a cell is not significant, and that not all two transistor cell structure devices provide byte alterability. (Byte alteration is the process by which a specific byte address's contents are erased and then rewritten.) Similarly, they state that certain one transistor cell devices provide byte alterability (*Cf.*, Respondents, January 13, 1992, *passim*, and Toshiba, July 25, 1991 at 41).

While the Department acknowledges that the Toshiba triple-poly Flash contains what "amounts" to a two transistor cell structure, we suspect that the Toshiba triple poly has the potential to byte-erase, but the manufacturer chose not to equip the product with the additional mechanisms necessary for byte-erase.

Respondents never disprove the Department's central contention that the select gate in the E²PROM is responsible for the provision of byte-alterability and that the select gate adds to the size of E²PROM and results in extra cost. As established in this final determination, the Flash EPROM is based on one transistor cell EPROM structure, cannot provide byte-alterability, and will approximate the EPROM in size and cost at the 8Mb level.

EPROM or EPROM is its provision of both erasable and non-volatile storage capability. Without the provision of non-volatility, the Flash EPROM or EPROM would be an expensive random access memory (RAM) semiconductor chip lacking byte alterability. Although electrical erasability is an important aspect of the Flash EPROM, it is clearly not the primary use.

EPROMs were originally marketed as rewritable, non-volatile memory chips. Their non-volatile rewritability distinguished them from DRAMs and SRAMs which are rewritable, but volatile. The revolutionary feaure of the EPROM was its rewritability in the context of its non-volatility. Non-volatility and rewritability are novel and invaluable only in combination. They are commonplace individually (*e.g.*, read only memory (ROM) is non-volatile but non-rewritable, and RAM is rewritable but volatile).

Several passages in a recent article regarding Flash "memory devices" succinctly emphasize the importance of the presence or absence of non-volatility in Flash EPROMs and RAM semiconductor chips:

> Unlike RAM chips they retain information when the computer is turned off and thus make it unnecessary to use bulky disk-drive storage systems in light-weight computers such as laptops * * *. RAM memory is cheap and reliable, but it has a major shortcoming: RAM chips lose the information they hold when the power is turned off * * *. One great advantage of flash memory chips is that they are "non-volatile"—that is, they hold whatever is stored in them when the power is off. (Washington Post, February 6, 1992, at 1 and 24.)

Respondents' statements on the importance of solid state non-volatility are misleading. Respondents confuse the issue by stating that magnetic storage media are also non-volatile, but neglect to acknowledge that those products are not comparable because they are motor-driven magnetic storage media, not solid state electronic semiconductor storage media products like the EPROM or the Flash EPROM. Flash EPROM semiconductors mimic magnetic storage's non-volatility and provide bulk rewritability.

Respondents' contention that electrical erasability is the primary end use of Flash EPROMs is erroneous. If the Flash EPROM were merely electrically erasable, and not non-volatile, its purported end uses would not exist. *Non-volatile* Flash EPROMs are replacing *non-volatile* magnetic storage because they represent a *non-volatile* solid-state electronic semiconductor alternative to *non-volatile* energy-hungry, mechanical-breakdown prone, motor-driven magnetic storage. Non-volatility in tandem with electrical erasability is the most important criterion, not electrical erasability alone.

In conclusion, the uses of the Flash EPROM, because of its non-volatility and erasability, are similar to the use of the EPROM. As discussed above, these similarities outweigh the erasure methodology differences between the Flash EPROM and the EPROM.

Comment 11

Respondents argue that Flash memory cards are already sold through different channels of trade than EPROMs. Respondents state that while semiconductor products are typically sold wholesale by a semiconductor manufacturer, either directly or through a distributor, to an original equipment manufacturer, Flash memory cards are being sold retail to the general public. Further, repondents assert that this retail sale of Flash Memory represents a significantly different channel of trade from EPROMs.

DOC Response

While respondents argue that Flash memory *cards* are being sold at retail, they provide no evidence or argument concerning Flash EPROMs. In addition, respondents fail to provide any information that would lead the Department to determine that all Flash EPROMs are incorporated, by semiconductor manufacturers, into cards for distribution solely through retail sales to the general public. We also note that this scope determination concerns the Flash EPROM, not the Flash memory card.

Comment 12

Respondents argue that petitioners' own advertisements demonstrate the different qualities of Flash Memories. Stating that the petitioners' brochure contrasts its Flash memory card with other memory alternatives (disk, SRAM, DRAM, E^2PROM, OTP/EPROM, and Masked ROM), respondents assert that when advertisements include more than one product specifically for the purpose of differentiating those products, then the Department must conclude that the products are advertised and displayed differently.

DOC Response

The Department does not, and cannot, determine that comparative advertising equates to significant differences in methods of advertisement and display. The fact that petitioners' advertisements differentiate between Flash Memories and other memory alternatives demonstrates that both products, although compared in advertisements, are in fact, advertised and displayed for the purpose of reaching the same consumer. Further, petitioners' advertising of the Flash EPROM supports the Department's determination that the Flash EPROM, as an improvement of the EPROM, is intended as a substitute for the EPROM. One of petitioners' advertisements (which is included in respondents' submission) predicts Flash EPROM's replacement of EPROMs.

> [The ease and speed of Flash EPROM rewrite] means you can get rid of all your "spare" EPROMs and costly UV-erase equipment. (Respondents, July 25, 1991, at Attachment 13.)

The overt advertising message is to replace EPROMs with Flash EPROMs.

Final Determination

The Department determines that Flash Memories are later-developed products for purposes of section 781(d) of the Act. Further, based on an analysis of the criteria of 19 CFR 353.29(h), the Department determines that Flash Memories based on the one transistor EPROM technology are the same class or kind of merchandise as EPROMs and, therefore, Flash Memories are within the scope of the suspended investigation and suspension agreement on EPROMs from Japan.

This determination is issued in accordance with § 353.29(d)(5) of the Department's regulations.

Dated: March 26, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR DOC. 92-7839 Filed 4-3-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Mackerel Advisory Panel (Panel) on April 30, 1992, from 9 a.m. until 3 p.m., at the Landmark Hotel-Metairie, 2601 Severn Avenue, Metairie, LA.

The Panel will review the report of the Mackerel Stock Assessment Panel and review the status report on Mackerel Amendment #6.

For more information contact Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West

Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: March 31, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–7795 Filed 4–3–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) will hold public meetings of its Committees from April 28–29, 1992, at the Landmark Hotel-Metairie, 2601 Severn Avenue, Metairie, LA.

On April 28, 1992, from 1 p.m. until 5 p.m., the Standing and Special Reef Fish Scientific and Statistical Committee will meet to review the Reef Fish Stock Assessment Panel report.

On April 29, 1992, the following Committee will meet: The Standing Scientific and Statistical Committee will meet from 8 a.m. until 10:30 a.m., to review the Generic Amendment on Permitting and Reporting; the Standing and Special Red Drum Scientific Statistical Committee will meet from 10:30 a.m. until 11:30 a.m., to review Red Drum Amendment #3; and the Standing and Special Mackerel Scientific and Statistical Committee (SSMSSC) will meet from 12:30 p.m. until 2:30 p.m., to review the report of the Mackerel Stock Assessment Panel, and from 2:30 p.m. until 4:30 p.m., to review the report of the Mackerel Socioeconomic Assessment Panel.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: March 31, 1992.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–7797 Filed 4–3–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Moratorium Committee (Committee) will meet on April 15, 1992, beginning at 9 a.m., at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., room 2079, Seattle, Washington.

The committee will receive a briefing on the draft analysis of a proposed moratorium on entry to all fisheries under the jurisdiction of the North Pacific Fishery Management Council.

For more information contact Jim Cornelius, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: March 31, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–7796 Filed 4–3–92; 8:45 am]

BILLING CODE 3510–22–M

Intent To Conduct a Public Meeting on Sites To Be Considered for Nomination as Components to the Proposed San Francisco Bay National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: San Francisco State University, of the State of California, intends to conduct public meetings on April 21 and 22, 1992 to discuss the nomination of sites as components of the proposed San Francisco Bay National Estuarine Research Reserve (SFBNERR). San Francisco State University is identifying estuarine areas in an effort to establish a multi-component system for reseach and education which adequately represents the major estuarine characteristics of the San Francisco Bay ecosystem. Sites ultimately designated as components of the SFBNERR will be used by researchers, educators and the general public to study estuarine ecology and related issues. Site selection criteria are based on ecological representativeness, value for research and education, and practical management considerations.

Following the public meetings, a site nomination document will be developed based on existing research documents and literature, and comments received from NOAA, the SFBNERR advisory committee and the general public. The final site selection document will then be sent to the Governor of California for approval. If approved, the Governor will forward the site selection package and a nomination letter to NOAA for final clearance. Once site selection has been established, the process of preparing a Draft Environmental Impact Statement and Draft Management Plan for the approved site(s) will commence.

All interested individuals and organizations are encouraged to attend the public meetings. Written comments for site nominations are also invited. An information packet on the proposed SFBNERR will be available at the meeting.

DATES AND LOCATIONS: The public meetings will be held:

- April 21, 1992 at 7:30 p.m. at the California Maritime Academy Auditorium, 200 Maritime Academy Drive, Vallejo California. Phone: 707/648–4200.
- April 22, 1992 at 7:30 p.m. at the Fort Mason Center Firehouse, San Francisco, California. Phone: 415/441–5706.

FOR FURTHER INFORMATION CONTACT: Mike Vasey, Coordinator, San Francisco Bay National Estuarine Research Reserve Project, c/o Department of Biology, San Francisco State University, 1600 Holloway Avenue, San Francisco, California 94132. 415/338–1957; or Steven G. Olson, Pacific Region, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. 202/606–4126.

Federal Domestic Assistance Catalog Number 11.420.

(Coastal Zone Management) National Estuarine Research Reserves.

Dated: March 27, 1992.

John J. Carey,

Deputy Assistant Administrator for Ocean Services.

[FR Doc. 92–7763 Filed 4–3–92; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute; Meeting

AGENCY: Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV). The purpose of the DEOMI BOV is to serve as an external source of expertise to ensure periodic review of

the objectives, policies, and operations of DEOMI. The Board meets annually.

DATES: May 12, 1992 (Agenda follows).

ADDRESSES: The Defense Equal Opportunity Management Institute, Patrick Air Force Base, Florida.

AGENDA: Sessions will be conducted and will be open to the public as indicated below.

Tuesday, May 12, 1992

8 a.m.–11 a.m.—Review of minutes from last meeting, Presentation of New Business.

11:30 a.m.–1 p.m.—Luncheon (by Invitation).

1 p.m.–4:30 p.m.—General Conference Activities.

FOR FURTHER INFORMATION CONTACT: LT K.E. Simpson, USN, Directorate of Liaison & External Training, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685; telephone (407) 494–5979.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the Board of Visitors meeting:

(1) Members of the public are permitted to attend all Board sessions conducted in pursuit of the Board's charter.

(2) Interested persons may submit written statements for consideration by the Board and/or make oral presentations of same during the meeting.

(3) Persons desiring to make oral presentations or submit written statements to the Board must notify the point of contact listed on page one no later than April 30, 1992.

(4) Length and number of oral presentations to be made will depend on the number of such requests received.

(5) Persons submitting written statements only for inclusion in the minutes of the meeting must submit one copy no later than five days after the meeting adjourns.

(6) Other new items from members of the public may be presented in writing to any DEOMI BOV member for transmittal to the BOV Chair or Commandant, DEOMI, to consider.

(7) Members of the public will not be permitted to enter into oral discussions conducted by the Board members at any of the meeting sessions; however, they will be permitted to reply to any questions directed to them by the members of the Board.

(8) Members of the public will be permitted to orally question any scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

Dated: March 30, 1992.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–7757 Filed 4–3–92; 8:45 am]

BILLING CODE 3810–01–M

United States Court of Military Appeals Code Committee Meeting

ACTION: Notice of public hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146, Uniform Code of Military Justice, 10 U.S.C. 946, to be held at 3:15 p.m. on May 1, 1992, in the Marvin Center of the George Washington, University, 800 21st Street NW., Washington, DC 20052. The agenda for this meeting will include consideration of the number and status of pending cases; uniformity of sentencing policies; and proposed changes to the Uniform Code of Military Justice, 10 U.S.C. 801 *et seq.*, and the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATES: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street NW., Washington, DC 20442–0001, telephone (202) 272–1448.

Dated: March 30, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–7758 Filed 4–3–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Discovery of Human Skeletal Remains at the Memorial Park Site, Lock Haven, PA

AGENCY: U.S. Army Corps of Engineers, Baltimore District, DOD.

ACTION: Notice of discovery of human skeletal remains at the Memorial Park Site, Lock Haven, Pennsylvania.

SUMMARY: Pursuant to the Native American Graves Protection and Repatriation Act of 1990, section 5(d)(3), the Corps of Engineers hereby gives notice of the results of the discovery of Native American remains at Lock Haven.

Human teeth and bone were recovered from the Memorial Park Site (36CN164), Lock Haven, Pennsylvania. Unfortunately, they are poorly preserved, fragmentary and incomplete. Bony landmarks that indicate age and sex are absent; however, an assessment of age has been made based on the current state of the bones and tooth wear.

FOR FURTHER INFORMATION CONTACT: Ms. Mimi Woods (410) 962–9502, U.S. Army Corps of Engineers, Attn: CENAB-PL-EA, P.O. Box 1715, Baltimore, MD 21203–1715.

SUPPLEMENTARY INFORMATION: Human skeletal remains were recovered from two features, each apparently containing a single burial. Both features contained charcoal and burned animal bones; the human bones, however were not burned. The skeletal remains found in two features. Tooth crown enamel, the cranium and thick dense parts of the femur were found. Even though the remains are weathered they have intact external surfaces. Tooth roots and enamel are only visible as a powdery residue within some of the crowns. The teeth found in the first feature have calculus and small caries are on the posterior teeth. The teeth found in the other feature were also diseased by slight hypoplasias on the mid-arch teeth and very mild calculus on the posterior teeth. Also present in the later feature are parts of the sphenoidal wing and maxilla.

The skeletal remains are of indeterminate sex. In regard to age, however, the remains found in the first feature are of a middle aged adult whereas the remains in the other feature are of a young adult. The actual parts of the skeleton recovered from the first feature are portions of the anterior cranium, and fragments from both the anterior lower dentition and the upper dentition. No disease is apparent in the cranium. In the second feature portions of the mid-left to posterior cranium, part of a femur and fragments of dentition were discovered. Due to the absence of the postcranium (e.g., shoulder, hip and knee joint areas) it is suggested that the only deposit in first feature was the cranium, whereas, the cranium as well as some large long bones were deposited in the second feature.

Apparently none of the cultural material discovered in the features associated with human remains are grave goods. These artifacts seem to be village debris consistent with the artifacts found in features that did not have associated human remains.

Itemization and Description of the Human Skeletal Remains

FS (math) and items	Description
534—14 enamel fragments	Not reconstructible. Represent four or five permanent premolar and molar crowns. Eleven fragments show clear but light wear facets. No observable pathology. Probably belonged to a young adult, sex unknown.
562—Several small enamel fragments	Not reconstructible. Represent an unsided upper second premolar, possibly another premolar, and right (?) upper first and second molars of the permanent dentition. Molars show buccal pits; molars and second premolar show faint interstitial facets and mild occlusal polish. No observable pathology. Probably belonged to a young adult, sex unknown.
1076—1 enamel fragment	Represents a permanent premolar (part of occlusal surface), showing little wear. Probably belongs to the same individual represented above.
1296 [1]—Several cranial and enamel fragments.	Not reconstructible. Represents parts of the anterior upper splanchno and neuro-cranium, and several teeth. Bones represented are the middle frontal, right petrous temporal, unsided sphenoid, and right maxilla. Teeth represented are all upper permanent, and lower permanent anterior to the molars. The teeth show mild to moderate wear, with spot dentin exposure on the canines and premolars, and planar wear on the molars. No observable pathology on the cranial fragments. Moderate calculus on molars; caries on all right and third left upper molars, and on lower right second premolar. Probably belonged to an early middle-aged adult, sex unknown.
1297 [1]—Several cranial, enamel and femur fragments.	Not reconstructible. Represents parts of the mid-left to posterior neurocranium, unsided upper leg, and the lower dentition. Bones represented are midline and unsided occipital, left petrous temporal, left sphenoid, and unsided upper to mid-shaft diaphysis of femur. Teeth represented are all lower permanent anterior to the third molars, and one upper right canine. The teeth show light wear and no dentin exposure. No observable pathology on the cranial or femur fragments. Mild calculus on molars; very faint linear hypo-plasias and discoloration on the canines and possibly premolars; no caries. Probably belonged to a young adult, sex unknown.

[1] Copies of the original skeletal inventory and observation sheets for materials are catalogued as field specimen numbers 1296 and 1297.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-7903 Filed 4-3-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Record of Decision Concerning Operation of the Electromagnetic Pulse Radio-Frequency Environment Simulator for Ships (Empress II) in the Gulf of Mexico

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision that there is not at this time a requirement for EMPRESS II operations in the Gulf of Mexico and that the No Action alternative has been chosen.

Since distribution in November 1991 of the Final Environmental Impact Statement (FEIS) for proposed EMPRESS II operations in the Gulf of Mexico, continuing fiscal pressure on the Navy budget has forced reductions in EMPRESS II testing. As a result, all anticipated testing can be performed in a single operating area. The documentation provided satisfies all operational and environmental concerns and would otherwise support selection of alternatives 2 and 3, as described in the FEIS. Selection of the No Action alternative allows the continuation of EMPRESS operations in the VACAPES operating area.

The Navy will retain alternatives 2 and 3 as feasible operating areas if funds are again available to support EMPRESS II testing in the Gulf of Mexico. In that event, the Navy will comply with the requirements of NEPA, including public notification and interaction.

Alternative 2 continues to be the preferred operating area for testing in the Gulf of Mexico. Alternative 3 provides reduced impact to fishing and oil concerns and is the environmentally preferred alternative, but it presents significant operational difficulties. Alternative 1 is environmentally unacceptable because of the potential impact on oil platforms, lightering operations, and adjacent air combat maneuvering range operations caused by proximate ship movements in the EMPRESS II operation.

Alternative concepts to EMPRESS II operations that were evaluated included Analysis and Computer Modeling; Laboratory Testing, including Scale-Model Testing and Direct-Injection Testing; Land-Based EMP Simulator Testing; and Coastal Operating Sites.

The Alternative concepts were not acceptable for the following reasons:

- *Analysis and Computer Modeling* is deemed unsatisfactory due to complexity of the problem and the remaining requirement for at-sea validation of modeling accuracy;
- *Laboratory Testing* cannot measure interactions between systems and is, therefore, not sufficient to assess susceptibility or validate hardening without full-scale EMP testing to confirm interaction between systems;
- *Scale-Modeling* and *Direct-Testing* are low-level system and component testing techniques which are not able to adequately characterize a total ship;
- *Land-Based EMPRESS II* is deemed unacceptable due to the need for excessive site dredging required for accessibility, mooring, and berthing and the associated adverse impact of these non-EMP related activities;
- *Coastal Operating Sites* were rejected because of their failure to meet critical siting criteria, i.e., too shallow to allow maneuvering of deep draft ships, or high densities of shipping, boating, and aviation in close proximity.

The Navy is committed to the development and conduct of testing, analysis, and field observation programs to address the concerns for environmental consequences that may result from EMPRESS II. After four years of testing by independent researchers in laboratories and under actual field conditions, no evidence has been found to indicate that EMP affects the environment. EMPRESS II will not pose any significant danger to human health, recreational boaters and fishermen; or interfere with communication equipment on land, platforms, or vessels. All known hazards would be mitigated or eliminated by procedural controls on test operations.

The Navy believes that there are no outstanding issues to be resolved with respect to EMP testing. Questions regarding this decision may be directed to Commander, Naval Sea System Command, Department of the Navy, Washington, DC 20362–5101 (Attn: Joseph Osborne), telephone (703) 602–3348.

Dated: March 24, 1992.

Elsie L. Munsell,

Deputy Assistant Secretary of Navy (Environment and Safety).

[FR Doc. 92–7778 Filed 4–3–92; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 92–32–NG]

Anadarko Trading Co.; Application for Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on March 6, 1992, by Anadarko Trading Company (ATC) requesting blanket authorization to export to Mexico up to 108 Bcf of natural gas over a two-year term beginning on the date of first delivery. ATC intends to use existing facilities, and will submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, May 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–032, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ATC, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of Anadarko Petroleum Corporation (Anadarko). ATC states that the gas to be exported would be purchased from Anadarko and other U.S. producers, as well as from marketers and pipelines. Prospective purchasers of this gas would include Mexican governmental entities, industrial and agricultural end users, electric utilities, pipelines and local distribution companies.

This export application will be revised under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the 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 export authority.

In support of its application, ATC states that the gas it plans to export would be surplus to domestic need. 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 Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have 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 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 ATC's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 31, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–7837 Filed 4–3–92; 8:45 am]

BILLING CODE 5450–01–M

[Fe Docket No. 92-25-NG]

Unigas Corporation; Application for Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Department of Energy, Office of Fossil 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 February 27, 1992, of an application filed by Unigas Corporation (Unigas) requesting blanket authorization to import and export from and to Canada, Mexico and other countries, up to a total of 200 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year term beginning on the date of first delivery of either imports or exports. The proposed imports and exports would take place at any existing international border facilities. No new construction would be involved. Unigas would provide DOE with quarterly reports detailing any import or export transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited

DATES: Protests, motions to intervene or notices of intervention, as appliable, 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, May 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202)586–4587.

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: Unigas, a Canadian Federal Corporation with its principal place of business in Calgary, Alberta, Canada, is a natural gas marketer involved in the marketing of Canadian natural gas in the United States. Although Unigas anticipates that the majority of the proposed transactions would be between the United States and Canada, Unigas is interested in securing authorization to import and export natural gas and LNG from and to other countries as well.

Unigas requests authorization to import natural gas and LNG for sales to pipelines, end-users, and local distribution companies in the United States, in addition to assisting others in the marketing of natural gas supplies. Unigas requests authorization to import and export natural gas on its own behalf or acting as an agent on the behalf of others. The requested export authorization would allow Unigas to sell U.S. natural gas for which there is no present national or regional need. Unigas indicates in its application that the identity of its suppliers and purchasers, and the specifics of each sale, are not known at this time but the contractual arrangements, including the price paid for the gas, would be competitive spot and short-term transactions based on market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market 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, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues. Unigas asserts that its proposal is in the public interest. Parties opposing Unigas' application bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have 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 Unigas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The

docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 31, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-7836 Filed 4-3-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. PP-94]

Notice of Floodplain/Wetland Involvement for a Presidential Permit Application by Central Power and Light Company

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Floodplain/Wetland Involvement.

SUMMARY: Central Power and Light Company (CPL) has applied to the Department of Energy (DOE) for a Presidential permit to construct, connect, operate, and maintain one 138-kilovolt (kV) and one 69-kV transmission line at the U.S./Mexican border. Notice of this Application appeared in the **Federal Register** on January 14, 1992 (57 FR 1464). The proposed action would involve the construction of the proposed transmission lines (approximately 1.7 miles in length) within a 100-year floodplain in Cameron County, Texas, just southwest of the City of Brownsville on the U.S. side of the Rio Grande River between the International Boundary and Water Commission levee and the Rio Grande River.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain and/or wetland assessment for the proposed project, to be incorporated into the environmental assessment of the proposed action that is being prepared in compliance with requirements of the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4321 et seq. and the implementing CEQ Regulations 42 U.S.C. 4371 et seq. Maps and further information are available from DOE at the address shown below for the Office of Fuels Programs.

DATES: Comments are due on or before April 21, 1992.

ADDRESSES: Send comments to: Ellen Russell, Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: On general DOE floodplain/wetlands environmental review requirements or the status of a NEPA review, contact Carol M. Morgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586-4600 or 1-800-472-2756.

Issued in Washington, DC, March 31, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-7838 Filed 4-3-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of February 7 Through February 14, 1992

During the Week of February 7 through February 14, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 31, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week of February 7 through February 14, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 10, 1992	Texaco/Marsh Distributing Company, Houston, TX	RR321-109	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The November 20, 1991 Decision and Order (Case No. RF321-10032) issued to Marsh Distributing Company would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Feb. 11, 1992	Pioneer International, Inc., Portland, OR	LEE-0036	Exception to the reporting requirements. If granted: Pioneer International, Inc. would not be required to file Form EIA-782B, "Reseller/Retailer's Monthly Petroleum Product Sales Report".
Feb. 13, 1992	National Whistleblower Center, Washington, DC	LFA-0184	Appeal of an information request denial. If granted: National Whistleblower Center would receive access to DOE information.
Feb. 14, 1992	Big Chief Roofing Company, Washington, DC	RR272-86	Request for modification/rescission in the crude oil refund proceeding. If granted: The June 26, 1991 Decision and Order (Case No. RF272-60244) issued to Big Chief Roofing Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Feb. 14, 1992	Daingerfield Manufacturing Company, Washington, DC	RR272-87	Request for modification/rescission in the crude oil refund proceeding. If granted: The June 26, 1991 Decision and Order (Case No. RF272-60381) issued to Daingerfield Manufacturing Company would be modified regarding the firm's application for refund submitted to the Crude Oil Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of February 7 to February 14, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
2/10/92	Bobber Auto/Truck Plaza	RF341-145
2/10/92	Denny's Clark Station	RF342-146
2/10/92	Gary's Clark Station	RF342-147
2/10/92	Dave's Clark	RF342-148
2/10/92	Fuel Products Inc	RF340-69
2/12/92	Steve's Arco	RF304-12824
2/12/92	Bob's Super 100 Clark #741	RF342-149
2/14/92	Mullar's Arco	RF304-12825
2/14/92	Kruegels, Inc	RF340-70
2/14/92	Greg's Super 100	RF342-150
2/14/92	Henry Keil & Sons, Inc	RF304-12826
2/07/92 thru 2/14/92	Texaco refund, aplication received	RF321-18444 thru RF321-18458
2/07/92 thru 2/14/92	Crude Oil, applications received	RF272-91580 thru RF272-91687
2/07/92 thru 2/14/92	Gulf Oil refund, applications received	RF300-19538 thru RF300-19659

[FR Doc. 92-7833 Filed 4-3-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of February 17 Through February 21, 1992

During the week of February 17 through February 21, 1992, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception.

Copies of the full test of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: March 31, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

J.M. Davis Industrial, Inc., Morehead City, NC—Lee-0034 Reporting Requirements

J.M. Davis Industries, Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On February 18, 1992, the DOE issued a Proposed Decision and Order in which it determined that the company did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements.

[FR Doc. 92-7835 Filed 4-3-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Application Filed With the Commission

March 16, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 2392-005.

c. Date Filed: March 9, 1990.

d. Applicant: Georgia-Pacific Corporation (licensee), Simpson Paper Company (transferee).

e. Name of Project: Gilman Hydroelectric Project.

f. Location: On the Connecticut River in Essex County, Vermont and Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Ms. Diane Durgin, Georgia-Pacific Corporation, 133 Peachtree Street NE., 11th Floor, Law Department, Atlanta, GA 30303, (404) 521-5208.

i. FERC Contact: Michael Dees (202) 219-2807.

j. Comment Date: May 1, 1992.

k. Description of Project: On March 9, 1990, the licensee and transferee filed a joint application to transfer the license for the Gilman Hydroelectric Project No. 2392. The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the transfer is to permit the sale of the project.

l. The transfer application was filed within five years of the expiraton of the license for Project No. 2392. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23, 756; FERC Statutes and Regulations, Regulations Preambles 1986-1990 ¶ 30,854 at 31,437), the Commission declined to forbid license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.* at p. 31,438 n. 318).

m. This notice also consists of the following standard paragraph: B, and C.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR §§ 385.210, .211, .214. In determining the

appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commision's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATON," "COMPETING APPLICATION," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027–UPC, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92–7768 Filed 4–3–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–144–000]

Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 30, 1992.

Take notice that on March 20, 1992, Gateway Pipeline Company (Gateway) tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1.

Gateway states that this filing provides for a level of rates and charges required to recover increased costs. The proposed new rates, when compared to the rates approved in Docket No. CP89–471–000, *et al.*, will result in an annual jurisdictional revenue increase of approximately $8.8 million.

Gateway states that the changes in costs that are reflected in the filing include a reduction in costs due to a determination by third parties to forego construction and operation of the facilities of the Jubilee sweetening plant.

Additionally, Gateway states that the changes in costs that are reflected in the filing include increases in the cost of construction of the facilities approved by the Commission in Docket No. CP89–471–000 *et al.*, due to (1) additional expenses incurred by Gateway because of the necessity to re-route portions of its system, as ordered by the Commission; (2) additional expenses incurred to comply with environmental conditions attached to the certificate issued to Gateway by the Commission; (3) the incurrence of additional costs in excess of Gateway's previous estimates; and (4) additional costs attributable to right-of-way contingencies not factored into Gateway's original cost estimates.

Gateway states that the Proposed Tariff Sheet sets forth rates which have been designed using 90 percent of design capacity. Gateway states that it is also filing an Alternate Tariff Sheet which contains rates that have been ion of the facilities of the Jubilee sweetening plant.

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 Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before April 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–7767 Filed 4–3–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–116–000]

Raton Gas Transmission Co.; Conference

March 30, 1992.

The ongoing conference in the above-captioned proceeding will reconvene on Thursday, April 9, 1992 at 10 a.m., in room 5112–C, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–7766 Filed 4–3–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00119; FRL–4055–3]

Forum on State and Tribal Toxics Action (FOSTTA); Coordinating Committee and Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Coordinating Committee and the five Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings at the time and place listed below in this notice. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. The Coordinating Committee and all the Projects will hold a meeting April 27 and 28.

2. The Projects will meet April 27 from 8 a.m. to 5 p.m. and April 28 from 8 a.m. to noon.

3. The Coordinating Committee will meet on April 28 from noon to 2 p.m.

ADDRESSES: The meetings will be held at: The Holiday Inn, 480 King St., Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley Pate, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or Sarah Hammond, Office of Pollution Prevention and Toxics (TS–799), at the same address. By telephone: Shirley Pate can be reached at (202) 260–8318 and Sarah Hammond at (202) 260–7258.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of State toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the States and between the States and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS). FOSTTA currently consists of the Coordinating Committee and five issue-specific Projects. The Projects are: (1) The Chemical Information Management Project (formerly the TRI Team); (2) the State and Tribal Enhancement and Decentralization Project; (3) the Pollution Prevention Project (formerly the 33/50 Team); (4) the Chemical Management Project; and (5) the Lead (Pb) Project.

Dated: March 30, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92–7842 Filed 4–3–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL-4119-9]

Proposed Administrative Superfund Settlement; Hawaiian Island Drum Site, MO

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement concerning the Hawaiian Island Drum Site ("The Site") located in Miller County, Missouri was issued by the Agency on March 16, 1992. The settlement resolves Agency claims under section 107 of CERCLA against the Hawaiian Island Land Company, Richard Wilhelmi and Betty Wilhelmi, Pauline E. Mathews, Bual Bales and Letha Bales, Jimmie D. Norman and Ruby Norman, Amy M. Singer, Richard and Virginia Jasinsky, Maurice Moore, Charles and Earleen Myers, and Sextro Painting and Decorating, Inc. ("The Settling Parties"). The settlement requires the Settling Parties to pay response costs in the amount of approximately $5,000 to the Hazardous Substance Superfund.

For thirty (30) days following the date of the publication of this Notice, the Agency will accept written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the EPA Region VII Office, located at 726 Minnesota Avenue in Kansas City, Kansas 66101, and at the local repository for site information: City Hall, P.O. Box 317, 1292 Bagnell Dam Boulevard, City of Lake Ozark, Missouri, 65049, telephone (314) 365–5378.

DATES: Comments must be submitted on or before May 6, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection during weekday business hours at the EPA Region VII Office at 726 Minnesota Avenue in Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Vanessa Cobbs, Regional Docket Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: (913) 551–7630.

Comments on the proposed settlement should reference the Hawaiian Island Drum Site, in Miller County, Missouri and EPA Docket No. VII–91–F–0004 and should be addressed to Ms. Cobbs at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Leslie Humphrey, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: (913) 551–7227.

Dated: March 25, 1992.

Robert Morby,

Acting Director, Waste Management Division, U.S. EPA Region VII.

[FR Doc. 92–7743 Filed 4–3–92; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44583; FRL–4056–4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on triethylene glycol monomethyl ether (TGME) (CAS No. 112–35–6), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for TGME were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.4440. They were received by EPA on March 9, 1992. The submission describes the developmental neurotoxicity evaluation of TGME administered by gavage to time-mated CD rats on gestational day 6 through postnatal day 21. Developmental neurotoxicity testing is required by this test rule. This chemical is used as an intermediate and diluent for brake fluids.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44583). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: March 26, 1992.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–7841 Filed 4–3–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission Ends AM Application Freeze

March 27, 1992.

The Federal Communications Commission will end the current freeze on filing applications for new AM construction permits and modifications of existing facilities at midnight on April 19, 1992. Applications may be filed on the current version of forms 301, 302 and 340 provided the applications also include the information responsive to the attached supplement and fee form. Revised forms which include the questions on the attachment and fee information have been approved by OMB; the new forms will not be available until approximately May 7, 1992. A subsequent public notice will set forth the date after which the new forms must be used.

For more information, contact Jim Burtle at 632–7010.

FCC Form 301 additional information requested from applicants for new or modified AM facilities.

Section II

7 Does the applicant, or any party to the application, have a petition to migrate to the expanded band (1605–1705 kHz) or a permit or license either in the existing band or expanded band that is held in combination with the AM facility proposed to be modified herein?

Yes_____ No_____

If yes, provide particulars as an Exhibit_____

Section V–A

3 Class of Station (A, B, C or D)_____

Stereo_____

Monaural_____

6 Type of feed circuits (excitation)

Series Feed_____ Shunt feed_____

Folded Unipole_____ Other (explain)_____

Overall height (meters) above ground without obstruction lighting:

Tower No:

1.....

2.....

3.....

4.....

5.....

6.....

14(b)

Distance from tower(s) to the nearest point of the fence enclosing the tower(s) in meters.

_____Meters

15(a)(4)(c)

Basis for ground conductivity utilized along each azimuth specified in (4)(a). If field strength measurements are used, submit copies of the analyzed measurements. If measurement data are taken from Commission records, identify the source of the measurements in the Commission's files.

15(C)(2)

Does the night 5 mV/m or nighttime interference free contour (which ever is higher) encompass 80% of the principal community to be served (50% for expanded band stations).

Yes_____ No_____

FCC Form 302 additional information requested from applicants for new or modified AM facilities.

Section I—General Data

6 Does the applicant, or any party to the application, have a petition to migrate to the expanded band (1605–1705 kHz) or a permit or license either in the existing band or expanded band that is held in combination with the AM facility proposed to be modified herein?

Yes_____ No_____

If yes, provide particulars as an Exhibit_____

Section II–A

6. Has type-approved stereo generating equipment been installed?

Yes_____ No_____

7. Does the sampling system meet the requirements of 47 C.F.R. Section 73.68?

Yes_____ No_____

If yes, attach as Figure_____ a detailed description of the sampling system as installed.

FCC Form 340 additional information requested from applicants for new or modified AM facilities.

Section II

9 Does the applicant, or any party to the application, have a petition to migrate to the expanded band (1605–1705 kHz) or a permit or license either in the existing band or expanded band that is held in combination with the AM facility proposed to be modified herein?

Yes_____ No_____

If yes, provide particulars as an Exhibit_____

Section V–A

3 Class of Station (A, B, C or D)_____

Stereo_____ Monaural_____

6 Type of feed circuits (excitation)

Series Feed_____ Shunt feed_____

Folded Unipole_____ Other (explain)_____

Overall height (meters) above ground without obstruction lighting:

Tower No.:

1.....

2.....

3.....

4.....

5.....

6.....

14(b)

Distance from tower(s) to the nearest point of the fence enclosing the tower(s) in meters.

_____Meters

15(a)(4)(c)

Basis for ground conductivity utilized along each azimuth specified in (4)(a). If field strength measurements are used, submit copies of the analyzed measurements. If measurement data are taken from Commission records, identify the source of the measurements in the Commission's files.

15(C)(2)

Does the night 5mV/m or nighttime interference free contour (which ever is higher) encompass 80% of the principal community to be served (50% for expanded band stations).

Yes_____ No_____

Federal Communications Commission.

Donna R. Searcy.

Secretary.

[FR Doc. 92–7506 Filed 4–3–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Mitsui O.S.K. Passenger Line, Ltd., MOPAS Cruise Line S.A. and Mitsui O.S.K. Lines, Ltd., 1–1, Toranomon 2-chome, Minato-ku Tokyo 105, Japan.

Vessel: NIPPON MARU.

Dated: March 31, 1992.

Joseph C. Poling,

Secretary

[FR Doc. 92–7761 Filed 4–3–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformace of Transportation; Notice of 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: Mitsui O.S.K. Passenger Line, Ltd., 1–1, Toranomon 2-chome, Minato-ku, Tokyo 105, Japan.

Vessel: NIPPON MARU.

Dated: March 31, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–7762 Filed 4–3–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Discussion of the Procedures for Conducting Voluntary Research: Meeting

Name: Discussion of the Procedures for Conducting Voluntary Research.

Time and Date: 8:30 a.m.–12 Noon, April 29, 1992.

Place: Centers for Disease Control, Auditorium A, 1600 Clifton Road NE. Atlanta, Georgia 30333.

Status: The entire meeting will be open to the public.

SUPPLEMENTARY INFORMATION: ATSDR announced in the **Federal Register** the proposed procedures for volunteering to conduct research as part of the ATSDR Substance-Specific Applied Research Program on February 7, 1992 (57 FR 4758). It is anticipated that the voluntary research will be conducted by the private sector to fill priority data needs for hazardous substances that are the subjects of the ATSDR Toxicological Profiles. The priority data needs for 38 of these hazardous substances have been identified and were announced by ATSDR in the **Federal Register** (56 FR 52178) on October 17, 1991.

As part of the procedure for conducting voluntary research, ATSDR has developed a model agreement, Memorandum of Understanding (MOU), that will be signed by ATSDR and interested private sector organization(s) prior to the initiation of the voluntary research. The public is invited to comment on this procedure for conducting voluntary research and the model MOU. Copies of the MOU may be obtained from the contact person listed below.

Section 104(i)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), directs ATSDR to assure the initiation of a program of research designed to determine the health effects of hazardous substances for which adequate health effects information is not available. This meeting will facilitate the fulfillment of this mandate.

Matters to be Considered: The meeting will convene a group of interested parties to discuss the proposed procedures for volunteering to participate in the ATSDR's Substance-Specific Applied Research Program. Topics to be discussed include concept proposals, the triagency review process (Environmental Protection Agency, National Institute of Environmental Health Sciences, and ATSDR), study proposals, peer review requirements under CERCLA section 104(i)(13), testing guidelines (e.g., Good Laboratory Practices, Toxic Substance Control Act), laboratory requirements, entering into ATSDR's MOU, time schedules and initiation of research, institutional inspections, interim and final reports, and breaches of agreement.

ATSDR intends to enter into voluntary research projects in a manner that leads only to high quality scientific work. This necessitates the external peer review of study protocols and results consistent with CERCLA section 104(i)(13). ATSDR is aware of concerns within some segments of the public regarding voluntary research conducted by participating parties with vested interests in the research. Thus, the ATSDR encourages the public to comment on ATSDR's procedures for conducting voluntary research.

Contact Person for More Information: Dr. William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, ATSDR, (MS E29), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6015 or FTS 236–6015.

Dated: March 31, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 92–7777 Filed 4–3–92; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3423]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the porposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 27, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Proposal: Quality Control Study for Rental Housing Assistance Subsidies—Section 8 and Section 236.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Data will be collected from staff and tenants of Public Housing Agencies and owners of HUD-assisted housing to determine the estimated national error rate. This information will also be used to determine the eligibility and rent of tenants of section 8/section 236 assisted-housing and public housing.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
PHA/Owners Questionnaire	776		1		.585		454
Tenant Questionnaire	5,430		1		.833		4,525

Total Estimated Burden Hours: 4,979.

Status: Extension.

Contact: John Dickie, HUD (202) 7098–2770, Jennifer Main, OMB, (202) 395–6880.

Dated: March 27, 1992.

Proposal: Application Submission Requirements: Section 202 Housing for the Elderly and Section 811 Housing for Persons with Disabilities.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information is needed to facilitate a prompt and orderly conversion of the section 202 Direct Loan Pipeline Projects to the section 202 or section 811 Capital Advance Programs. This information will be used to assist HUD in determining the owner's eligibility and capacity to finalize the development of a housing project under the Capital Advance Program.

Form Number: HUD–92446–CA, 92476A, 9066–CA, 90165–CA, 9064–CA, 90171–CA, 90163–CA, 92450–CA, 91732A, 92531B–CA, 90167–CA, 90177–CA, 90170–CA, and 90176–CA.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion and Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	260		1		43.17		11,225

Total Estimated Burden Hours: 11,225.

Status: Extension.

Contact: Flossie Ellison, HUD, (202) 708–2866, Sharon Mizell, HUD, (202) 708–2866, Jennifer Main, OMB, (202) 395–6880.

Dated: March 27, 1992.

Proposal: Budgeted Rent Increase Process and Energy Conservation Certification.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Owners of certain cooperative, subsidized, and 202 projects will be required to submit the Budget Worksheet when requesting a rent increase. HUD will use the information to evaluate owner expense estimates.

Form Number: HUD–92547–A.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92547–A	12,500		1		1		12,500
Recordkeeping	12,500		1		.25		3,125

Total Estimated Burden Hours: 15,625.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708–3944, Jennifer Main, OMB, (202) 395–6880.

Dated: March 27, 1992.

[FR Doc. 92–7808 Filed 4–3–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3424]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 27, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Proposal: HUD Systems of Approval of Single Family Housing in New Subdivisions (FR–3095).

Office: Housing

Description of the Need for the Information and its Proposed Use: The information collected pertains only to the specific property on which HUD will insure a mortgage. The information is obtained by the real estate appraiser during the inspection of the property and reviewed by the lender's underwriter. The information must be collected on each case submitted for mortgage insurance that involves new construction in new subdivisions so that HUD is assured that no site/location factors will adversely affect the dwelling or homeowner.

Form Number: HUD–54891 and 54891A.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–54891	100		50		.75		3,750
HUD–54891A	800		82		.25		16,400

Total Estimated Burden Hours: 20,150.

Status: Revision.

Contact: Bud Carter, HUD, (202) 708–2700, Jennifer Main, OMB, (202) 395–6880.

Dated: March 27, 1992.

[FR Doc. 92–7809 Filed 4–3–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–4370–10]

Battle Mountain District Advisory Council Meeting in Eureka, NV

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday, April 28, 1992. The meeting will convene at 9 a.m. at the Eureka Country Court House.

SUPPLEMENTARY INFORMATION: The agenda will include:

1. Discussion on Off Highway Race Impacts.
2. Update on Las Vegas Water District filings.
3. Strategic Plan for Management of Wild Horses and Burros on Public Land.
4. Mill Creek Riparian Showcase.

The meeting is open to the public. Interested persons may make satements beginning at 3 p.m. on April 28, 1992. If you wish to make an oral statement, please contact James D. Currivan by April 24, 1992.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635–4000.

Dated: March 25, 1992.

Michael Mitchel,

Acting District Manager, Battle Mountain District.

[FR Doc. 92–7750 Filed 4–3–92; 8:45 am]

BILLING CODE 4310–HC–M

[NV–030–02–4212–14; N–55681]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action: Noncompetitive Sale of Federal Land in Douglas County, Nevada.

SUMMARY: In response to a request from Douglas County Sewer Improvement District No. 1, the following described federal land has been examined and found suitable for direct sale to the Improvement District under sections 203 and 209 of the Federal Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian

T. 13 N., R. 21 E.,
Sec. 7: SE¼;
Sec. 8: S½S½NW¼, SW¼;
Sec. 17: Lots 1, 2, and 3, NW¼;
Sec. 18: Lots 5, 6, 7, and 8, NE¼, E½NE¼NW¼, NE¼SE¼NW¼.

aggregating 1,002.74 acres, more or less.

The land is currently dedicated to use as an effluent treatment area by means of a right-of-way granted to Douglas County Sewer Improvement District No. 1. This use will continue whether or not the sale is completed. The land is not required for any federal purpose, but the use of the land for effluent disposal allows the Improvement District to comply with an Environmental Protection Agency directive regarding the Carson River. Disposal by sale is consistent with the Bureau's land use planning for this area and would be in the public interest. No conflicts with State or local plans have been identified.

The land will be offered to Douglas County Sewer Imporvement District No. 1 at fair market value, which will be determined by appraisal before the sale. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**, and not until all environmental and other required documents have been completed.

Upon determination that the mineral interests associated with the parcel have no known value, conveyance of available mineral interests will occur simultaneously with the sale of the land, and the purchaser will be required to pay a $50.00 non-returnable filing fee for the administrative cost of that conveyance.

The patent, when issued, will contain a reservation to the United States for a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (26 stat. 391, 43 U.S.C. 945). The patent will also be subject to those rights to maintain and use an overhead powerline which has been granted to Sierra pacific Power Company Right-of-Way Grant N–295 under the Act of March 4, 1911 (36 stat. 1258; 43 U.S.C. 961).

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. The segregation will terminate upon issuance of a patent or 270 days from the date this notice is published in the **Federal Register**.

For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments to the Carson City District Manager, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706. Any objections will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 24, 1992.

Kelly M. Madigan,

Acting District Manager, Carson City District.

[FR Doc. 92–7749 Filed 4–3–92; 8:45 am]

BILLING CODE 4310–HC–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Paperwork Reduction Project (1029–0036), Washington, DC 20503, telephone 202–395–7340.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information 30 CFR 778.

OMB Number: 1029–0036.

Abstract: Section 507(b) provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property to be affected, their compliance status and history. This information is used to ensure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency: On occasion.

Description of Repondents: Coal Mining Operators.

Annual Responses: 3,941.

Annual Burden Hours: 23,535.

Estimated Completion Time: 6 hours.

Bureau Clearance Officer: Andrew DeVito (202) 343–5150.

Dated: March 13, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 92–7780 Filed 4–3–92; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–348 (Sub 1X)]

Beaufort & Morehead Railroad Co. and Beaufort & Morehead Railway, Inc.; Abandonment and Discontinuance Exemption, in Carteret County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Beaufort & Morehead Railroad Company (BMRC) and Beaufort & Morehead Railway, Inc. from the prior approval requirements of 49 U.S.C. 10903–10904 to abandon and discontinue service over, respectively, BMRC's 2.3-mile rail line from the west end of the Gallant's Channel Trestle to the line's terminus in Beaufort, in Carteret County, NC, subject to environmental, historic, and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 6, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 16, 1992, petitions to stay must be filed by April 21, 1992, and petitions for reopening must be filed by May 1, 1992. Requests for a public use condition must be filed by April 16, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–348 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, Suite 700, 901–15th Street, NW., Washington, DC 20005–2301.

[1] *See Exempt. of Rail Line Abandoment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. to purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 25, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald did not participate in the dispostion of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–7801 Filed 4–3–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub #337X)]

Burlington Northern Railroad Co.; Abandonment Exemption—in Floyd, Hale, and Lubbock Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company of a 44.98-mile line of railroad between milepost 306.17, at Sterley, and milepost 351.15, at Lubbock, in Floyd, Hale, and Lubbock Counties, TX, subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 6, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by April 16, 1992. Requests for a public use condition must be filed by April 16, 1992.

Petitions to stay must be filed by April 21, 1992. Petitions for reopening must be filed by May 1, 1992.

ADDRESSES: Send pleadings, referring to Docket No. AB–6 (Sub-No. 337X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

(2) Petitioner's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: March 27, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–7805 Filed 4–3–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32039]

CSX Transportation, Inc.; Trackage Rights Exemption—Consolidated Rail Corp.

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT) between milepost 38.9± at Greencastle, IN, and milepost 70.5± at Terre Haute, IN, a distance of approximately 31.6 miles. Use of the trackage rights is expected to begin on or about June 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and as clarified in *Wilmington Term. R.R., Inc.—Pur. & Lease-CSX transp. Inc.*, 6 I.C.C. 2d 799 (1990).

Decided: March 30, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–7803 Filed 4–3–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32038]

CSX Transportation, Inc.; Trackage Rights Exemption—Consolidated Rail Corp.

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), over approximately 1.79 miles of rail line in Indianapolis, IN, from the Conrail connection at "IU" Interlocking, eastward to the east clearance point of the crossover connection between Conrail and CSXT at Pine Main. The exemption became effective on March 27, 1992.

Acquisition of these trackage rights will allow CSXT to operate its trains, locomotives, cars, and equipment with its own crews on Conrail's Pine Main to meet and pass CSXT's trains operating over Conrail's line between Indianapolis and Crawfordsville, IN.

This notice if filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 31, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–7803 Filed 4–3–92; 8:45 am]

BILLING CODE 7035–01–M

Indexing the Annual Operating Revenues of Railroads, Motor Carriers of Property and Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads, motor carriers of property and motor carriers of passengers for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determined the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. For both motor carriers of property and motor carriers of passengers, the inflation factors are based on the annual average Producer Price Index for all commodities. The indexes are developed by the Bureau of Labor Statistics (BLS).

The base year for railroads, motor carriers of property, and passenger motor carriers are 1978, 1980, and 1988 respectively. The inflation index factors for 1989, 1990, and 1991 are presented as follows:

	Index	Deflator Percent
Railroads Railroad Freight Index		
1978	213.1	
1989	398.5	53.48
1990	402.3	52.98
1991	409.5	52.05
Motor Carriers of Property Producer Price Index*		
1980	89.8	
1989	112.2	80.04
1990	116.3	77.21
1991	116.5	77.08
Motor Carriers of Passengers Producer Price Index		
1988	106.9	
1989	112.2	95.28
1990	116.3	91.92
1991	116.5	91.76

* The indices and deflator percentages for motor carriers of property were adjusted to reflect changes by the BLS.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 927–5730.

Sidney L. Strickland Jr.,

Secretary.

[FR Doc. 92–7804 Filed 4–3–92; 8:45 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Meeting

The Nuclear Safety Research Review Committee (NSRRC) will hold its next

meeting on April 29–30, 1992, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to review the NRC's research program on digital instrumentation and controls (DI&C) for nuclear power plants; to discuss NSRRC organization, operations, and communication; and to deliberate on questions posed to the Committee by Dr. Ivan Selin, Chairman, Nuclear Regulatory Commission at the NSRRC's November 25–26, 1991, meeting. Chairman Selin's questions were about the agency's advanced instrumentation and controls research, the highest-priority research areas, skills for advanced reactors, the right level of research, and use of probabilistic risk assessment results.

Wednesday, April 29, 1992

8:30 a.m.–9 a.m.: Introduction: NSRRC Chairman; RES Director.
9 a.m.–4 p.m.: Discussion of DI&C Research Program.
4 p.m.–5 p.m.: Committee discussions.

Thursday, April 30, 1992

8 a.m.–9 a.m.: Discussion of NSRRC Organization and Operations.
9 a.m.–3 p.m.: Research priorities; advanced reactor staff review needs; appropriate level of NRC research; NRC use of PRA.
3 p.m.–4 p.m.: Communications between RES staff and NSRRC.
4 p.m.–5 p.m.: Committee discussions.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated: March 31, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–7826 Filed 4–3–92; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Extension of Approval for Information Collection: Employer Liability for Withdrawals From and Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMN approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested an extension by the Office of Management and Budget of the expiration date of a currently approved information collection requirement (1212–0017) without any change in substance or in the method of collection. The information collection, which is scheduled to expire on May 31, 1992, is contained in the PBGC's regulation on Employer Liability for Withdrawals from and Terminations of Single-Employer Plans, 29 CFR part 2622. This notice advises the public of the PBGC's request for an extension of OMB approval for this collection of information.

ADDRESSES: Written comments (at least three copies) should be addressed to the Office of Management and Budget, Paperwork Reduction Project (1212–0017), Washington, DC 20503. Requests for information and copies of the proposed collection of information and supporting documentation, should be addressed to the Communications and Public Affairs Department (Code 38000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The request for extension will be available for public inspection, and copying, at the PBGC Communications and Public Affairs Department in suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8850 (202–778–1958 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of management and Budget extend for three years the approval of the collection of information contained in the PBGC's regulation on Employer Liability for Withdrawals from the Terminations of Single-Employer Plans, 29 CFR part 2622. Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1362 ("ERISA"), provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group ("the employer") incur employer liability if the plan terminates with assets insufficient to pay benefit liabilities under the plan. However, the payment terms for employer liability and the PBGC's statutory lien for employer liability are both affected by whether and to what extent the unadjusted liability exceeds 30 percent of the employer's net worth. Section 2622.3 of the employer liability regulation requires that an employer submit information that will enable the PBGC to determine the employer's net worth. If this information is not provided to the PBGC, it would be significantly hindered in the performance of its statutory duty to collect employer liability.

The PBGC has approximately 80 pension plan terminations per year that present a net worth issue. Based on its recent experience concerning the number of plans maintained and terminated by each employer (ranging from one per employer to ten per employer), the PBGC estimates that only 70 employers per year will be affected by this information collection. Normally, only one submission of net worth information for an employer is required, regardless of the number of plans being terminated.

The PBGC estimates that the time required to comply with this information collection ranges from one hour to several weeks, with the mean being three days. It has been PBGC's experience that there is great diversity in the character of the employers involved and the effort required to submit the data. In most instances, only copying and transmission of existing data is needed. In some, new net worth data may have to be complied. Based on the mean time of three days (24 hours) and the estimated number of responses (70), the annual burden is estimated at 1680 hours.

Issued at Washington, DC this 1st day of April 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-7846 Filed 4-3-92; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

March 31, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Intercapital Insured Municipal Trust
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7-8285)
Korean Investment Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-8286)
Living Centers of America, Inc.
Common Stock, $0.01 Par Value (File No. 7-8287)
Magma Copper Co.
Class B. Common Stock, $0.01 Par Value (File No. 7-8288)
North Carolina Natural Gas Corp.
Common Stock, $2.50 Par Value (File No. 7-8289)
Sears, Roebuck & Co.
$3.75 Dep. Shares (Rep. ¼ of share of Ser. A. Man. Exch. Pfd. Stock) (File No. 7-8290)
Stone Container Corp.
$1.75 Ser. E. Cum. Conv. Exch. Pfd. Stock, $0.01 Par Value (File No. 7-8291)
Tandy Corp.
$2.14 Dep. Shares (Rep. 1/100 of a share of Ser. C Conv. Pfd. Stock, No Par Value (File No. 7-8292)
Value Merchants, Inc.
Common Stock, $0.01 Par Value (File No. 7-8293)
Van Kampen Merritt Trust for Insured Municipals
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7-8294)
Van Kampen Merritt Trust for Investment Grade Municipals
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7-8295)
First City Bancorp, Inc.
Common Stock, No Par Value (File No. 7-8296)
Hemlo Gold Mines, Inc.
Common Stock, No Par Value (File No. 7-8297)
Intertape Polymer Group, Inc.
Common Stock, No Par Value (File No. 7-8298)
Verit Industries, Inc.
Common Stock, $0.001 Par Value (File No. 7-8299)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 21, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-7815 Filed 4-3-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

March 31, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Aon Corporation
Series B Conversion Preferred Stock "Preferred Equity Redemption Cumulative Stock", $1.00 Par Value (File No. 7-8300)
Coltec Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-8301)
Mexico Fund, Inc.
Common Stock Subscription Rights, No Par Value (File No. 7-8302)
Transcontinental Realty Investors, Inc.
Common Stock, $.01 Par Value (File No. 7-8303)
Texas Instruments, Inc.
$2.26 Depositary Shares (each representing ¼ share Series A Convertible Preferred, $25 Par Value (File No. 7-8304))
Catalina Marketing Corporation
Common Stock, $.01 Par Value (File No. 7-8305)
Liberty Term Trust—1999
Common Stock, $.001 Par Value (File No. 7-8306)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 21, 1992, written data, views and arguments concerning the above-reference application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-7816 Filed 4-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30527; File No. SR-MSRB-92-31]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Underwriting Assessments

March 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1992, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing an amendment to Board rule A–13 concerning the underwriting assessment charged to brokers, dealers, and municipal securities dealers (hereafter referred to as "the proposed rule change"). To ensure that the industry receives ample notification of the revision in the underwriting assessment procedure contained in the proposed rule change, the Board has set a date of July 1, 1992, for the proposed rule change to be implemented.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule A–13 currently requires brokers, dealers, and municipal securities dealers to pay to the Board fees based on the underwriting of new issue municipal securities ("underwriting assessment"). The purpose of the underwriting assessment is to provide a continuing source of revenue to defray the costs and expenses of operating the Board and administering its activities. The scope of rule A–13 currently includes all new issues purchased by or through a broker, dealers, or municipal securities dealer which have an aggregate par value of $1,000,000 or more and a final stated maturity of not less than two years from the date of the securities. The rate of assessment is $.03 per $1,000 of the par value of such securities. Brokers, dealers, and municipal securities dealers are required to pay the underwriting assessment to the Board within 30 days after settlement with the issuer, and the Board currently does not invoice underwriters for these fees. The proposed rule change includes revisions in rule A–13 relating to: (i) The Board's method of collecting and accounting for underwriting assessments; (ii) the primary offerings subject to underwriting assessment; and (iii) a lower assessment rate for offerings of certain short-term and puttable securities.

Method of Collecting and Accounting for Underwriting Assessments

To help ensure that underwriters are complying with rule A–13, the Board currently reviews the results of negotiated and competitive sales, as reported in industry publications such as The Bond Buyer. From these lists, the Board identifies issues that are within the scope of rule A–13 (*i.e.*, all new issues except those under $1 million in par value or under 2 years in maturity). The Board generates receivables on this basis for the Board's accounting system. Payment for approximately 8,000 issues were handled using this method in fiscal year 1991.

Under this system, the Board frequently receives payments for new issues that are not listed in industry publications (*e.g.*, private placements and some smaller issues). In addition, in certain instances, the information obtained from industry publications is erroneous (*e.g.*, the par value of an issue may be listed incorrectly). As a result, the Board's current accounting procedure must handle numerous entries to make adjustments for problems encountered when the lists of reported issues do not match the underwriting assessments actually received. This occasions numerous letters to and from underwriters relating to additional payments that are due from underwriters or refunds that are due to underwriters. As an example, approximately 50–75 dunning letters per month are sent to underwriters that apparently have failed to pay underwriting assessments in a timely manner. This process is time-consuming for the Board as well as for underwriters.

The Board has determined that, to improve its accounting system, it will base its receivables for underwriting assessments on the official statements received by the Board under Board rule G–36, rather than on industry publications. Rule G–36 currently requires underwriters to send to the Board official statements for most primary offerings of municipal securities. By using these official statements, and the associated Forms G–36 that must be submitted with the official statements, the Board will be able to invoice underwriters directly for underwriting assessments and will be able to maintain a more accurate accounting of underwriting assessments that are due to the Board.

The Board intends to invoice underwriters monthly for underwriting assessments. The proposed rule change will require that brokers, dealers, and municipal securities dealers must pay the invoices sent by the Board within 30 days after the date that the invoices are sent by the Board.

In addition to improving the accuracy of the Board's accounting system, the Board believes that the new invoicing procedure will be a convenience to underwriters, because it will provide each underwriter with a concise monthly listing identifying the primary offerings for which the Board received official statements under rule G–36. The invoice also will state the amount of the underwriting assessment, if any, that is due on each primary offering and the total amount due from the underwriter. The underwriter also will be able to pay the assessment fee for all offerings listed on the invoice with one check, which will be more convenient to the underwriter than the current practice of writing separate checks for each offering.

Primary Offerings Subject to Underwriting Assessment and Lower Assessment Rate for Certain Short-Term and Puttable Offerings

Under the proposed rule change, all primary offerings of municipal securities will be subject to underwriting assessment except for those primary offerings that:

(i) Have an aggregate par value less than $1,000,000;

(ii) Have a maturity of nine months or less;

(iii) At the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as feaquently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent; or

(iv) Have authorized denominations of $100,000 or more and are sold to no more than thirty-five persons each of whom the broker, dealer, or municipal securities dealer reasonably believes: (A) has the knowledge and experience necessary to evaluate the merits and risks of the investment; and (B) is not purchasing for more than one account, with a view toward distributing the securities.

For those primary offerings subject to underwriting assessment under the above criteria, the assessment rates under the proposed rule change will be:

(i) For primary offerings in which all securities offered have a stated maturity date less than two years, .001% ($.01 per $1,000) of the par value;

(ii) For primary offerings in which all securities offered, at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every two years until maturity, earlier redemption, or purchase by an issuer or its designated agent, .001 ($.01 per $1,000) of the par value; and

(iii) For all other primary offerings subject to assessment, .003% ($.03 per $1,000) of the par value.

Discussion of Offerings Subject to Underwriting Assessment and Assessment Rates

The primary offerings subject to underwriting assessment and the assessment rates set forth in the proposed rule change differ in some respects from the current requirements of rule A–13. Because the new procedure for collecting and accounting for underwriting assessments will be based on official statements received by the Board under rule G–36, the scope of primary offerings subject to underwriting assessment had to be adjusted to be more consistent with the scope of primary offerings for which the Board receives official statements under rule G–36. The proposed rule change does this in a manner that the Board believes provides for an equitable assessment of primary offerings. The revisions in the scope of rule A–13 and the assessment rates are discussed below.

Application of Rule A–13 to "Primary Offerings," Including Some Remarketings

Rule A–13 currently applies to all "new issues" of municipal securities meeting specified characteristics. In contrast, rule G–36 applies to "primary offerings"—a term taken from Securities Exchange Act Rule 15c2–12, and which includes certain remarketings as well as new issues. The proposed rule change modifies rule A–13 so that the rule will be consistent with rule G–36 in referring to "primary offerings" rather than "new issues." The effect of this modification is to include within the scope of rule A–13 certain remarketings of municipal securities by brokers, dealers, and municipal securities dealers when the remarketings are affected, directly or indirectly, by or on behalf of the issuer of the securities.

The remarketings that will be subject to assessment under the proposed rule change include only those remarketings that are required to have an official statement under rule 15c2–12 and for which the Board will receive an official statement under rule G–36. However, any remarketing (as well as any other primary offering) meeting one or more of the criteria for exemption discussed below will not be subject to underwriting assessment, regardless of whether it is subject to rule 15c2–12 or rule G–36.

Exemption for Certain Categories of Offerings for Which the Board May Not Receive Official Statements

Certain primary offerings are not subject to the requirements of rule G–36. Thus, for these primary offerings, it is impossible for the Board to ensure that it will receive all official statements necessary to accurately invoice underwriters and generate receivables under the new procedure of collecting and accounting for underwriting assessments. The proposed rule change provides specific exemptions for three categories of offerings to address this potential problem. They are: (i) Offerings of securities with maturities of nine months or under; (ii) offerings of securities with put provisions that, at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent; and (iii) "limited placement" *i.e.*, offerings of securities that have authorized denominations of $100,000 or more and that are sold to no more than thirty-five persons each of whom the broker, dealer or municipal securities dealer reasonably believes: (A) has the knowledge and experience necessary to evaluate the merits and risks of the investment; and (B) is not purchasing for more than one account, with a view toward distributing the securities.

The new exemptions created by the proposed rule change will result in some primary offerings, which currently are assessed under rule A–13, being excluded from assessment. Specifically, certain "limited placements" and new issue offerings of securities having put provisions nine months or under in duration will no longer be assessed under the proposed rule change.

Inclusion of Primary Offerings of Securities Under Two Years, But Over Nine Months, in Maturity

The scope of rule A–13 currently excludes from assessment new issues having final maturities less than two years. As revised by the proposed rule change, the rule will exempt a primary offering if the maturity is nine months or less or if the securities are marketed with a put period of nine months or less. Thus, the proposed rule change will, in effect, add to the scope of rule A–13 certain primary offerings with maturities under two years but over nine months in length. Because these offerings are a significant part of the municipal securities market regulated by the Board, the Board believes that it is appropriate for such offerings to be assessed to help fund the Board's operations, albeit at a lower assessment rate.

New Assessment Rate

The proposed rule change does not alter the assessment rate for most primary offerings. That rate will remain at the current rate of $.03 per $1,000 per value. However, for those offerings that have final stated maturities under two years, but over nine months in length, the Board believes that the short-term nature of the securities make a lower rate appropriate. The Board has set the lower rate at $.01 per $1,000 par value. In addition, the proposed rule change treats primary offerings of securities with short-term put provisions in a manner similar to offerings of securities with short-term maturities. Accordingly, for primary offerings of puttable securities with put periods greater than nine months, but less than two years, the offerings will be assessed at the lower, short-term rate. For example, the assessment rate for a primary offering (including any remarketing) of securities with a one-year put period will be $.01 per $1,000, which is the same assessment rate for a new issue offering with a final stated maturity of one year.

Impact of Proposed Rule Change on Board Revenues

The revenue effect to the Board of the proposed rule change probably will be neutral to moderately positive. The Board will lose assessments on new issues that have put periods of nine months or less and on "limited placements." The Board would gain fees on short-term securities with maturities greater than nine months but less than two years and on certain remarketings of securities with put provisions over nine months in duration. All offerings on which fees will be lost are now assessed at the rate of $.03 per $1,000. Most offerings on which fees will be gained will be assessed at the rate of $.01 per $1,000. It is not possible to accurately calculate the exact impact of the proposed rule change on Board revenues because of the lack of accurate statistics on the relevant categories of primary offerings.

Scope of Rule A–13 Compared to Rule G–36

Although a primary intent of the proposed rule change is to make the scope of rule A–13 more consistent with rule G–36, there will remain some differences in the scope of the two rules. For example, primary offerings under $1 million in par value currently remain exempt from the scope of rule A–13, although rule G–36 requires that such official statements, if prepared, be sent to the Board. The Board has concluded to maintain the A–13 exemption from offerings under $1 million at this time even though this represents one area in which rule A–13 is not consistent with rule G–36.

(b) The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(J) of the Act authorizes and directs the Board to adopt rules providing for the assessment of brokers, dealers, and municipal securities dealers to defray the costs and expenses of operating and administering the Board. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder because it is concerned solely with changing a fee charged by the Board and the administration of the Board, and is consistent with the public interest. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to the file number in the caption above and should be submitted by April 27, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7813 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30531; File No. SR–NASD–92–9]

Self-Regulatory Organizations; Filing of Notice and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board Service Through June 30, 1992

March 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on March 16, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the SEC's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not included in the Nasdaq System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now include OTC Bulletin Board data. The Service is currently operating under an interim approval that expires on March 31, 1992.[2]

The NASD thus filed this proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through June 30, 1992. During this three-month interval, there will be no material change in the Bulletin Board's operational features.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C), below, of the most significant aspects of such statements.

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[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] Securities Exchange Act Release No 29979 (November 21, 1991), 56 FR 60141.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. As of February 28, 1992, the Service reflected 10,408 market making positions based on 261 NASD member firms displaying quotations/indications of interest in 4,085 unlisted securities.

During the proposed extension, foreign securities and American Depository Shares (collectively, "foreign/ADS issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADS issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealer's market making in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"). The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

The NASD relies on sections 11A(a)(1), 15A(b)(6) and (11), and section 17B of the Act as the statutory basis for the instant rule change proposal. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes or producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD submits that extension of the Service through June 30, 1992 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The NASD does not believe any burden will be placed on competition as a result of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 10(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through March 31, 1992. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,000 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD member's market making in these securities and that facilitates price discovery and the execution of customer orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in unlisted securities that are eligible and quoted in the service.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 27, 1992.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a three (3) month period, inclusive of June 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7814 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 31, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Biowhittaker, Inc.
Common Stock, $.01 Par Value (File No. 7–8307)
Biose Cascade Corporation
$1.79 Depositary Shares (representing 1/10 of a share of Convertible Preferred Stock, Series E) (File No. 7–8308)
British Telecommunications PLC
American Depositary Shares—1st installment (File No. 7–8309)
Customedix Corporation
Common Stock, $.01 Par Value (File No. 7–8310)
ETZ Lavud Limited
Ordinary Shares, NIS 0.17 (File No. 7–8311)
ETZ Lavud Limited
Class A voting Common Stock, NIS 0.17 (File No. 7–8312)
Fresenius USA, Inc.
Common Stock, $.01 Par Value (File No. 7–8313)
Lomas Financial Corporation
Common Stock, $2.00 Par Value (File No. 7–8314)
Meas, Inc.
Common Stock, No Par Value (File No. 7–8315)
Samuel Goldwyn Company
Common Stock, $.01 Par Value (File No. 7–8316)
Samuel Goldwyn Company
Class A Warrants (File No. 7–8317)
Samuel Goldwyn Company
Class B Warrants (File No. 7–8318)
Witco Corporation
Common Stock, $5.00 Par Value (File No. 7–8319)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 21, 1992, written data, view and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–7817 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 31, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

ACM Government Opportunity Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–8320)
Catalina Marketing Corporation
Common Stock, $.01 Par Value (File No. 7–8321)
Morgan Stanley Group, Inc.
Depositary Shares Cum. Pfd. Stock, No Par Value (File No. 7–8322)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 21, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–7818 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Datametrics Corporation, Common Stock, $0.01 Par Value) File No. 1–8690

March 31, 1992.

Datametrics Corporation ("Company") has filed an application with the Securities and Exchange Commission, ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Common Stock is currently listed on both the American Stock Exchange ("Amex") and the PSE. The Company believes that the added cost of maintaining both listings outweighs any incremental that the Company receives. Accordingly, the Company desires to terminate its listing on the PSE while maintaining the listing on the Amex.

Any interested person may, on or before April 21, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–7819 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. IC–18643; IA–1305; 812–7893]

The Drexel Burnham Lambert Group Inc.; Application

April 1, 1992.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") and the

Investment Advisers Act of 1940 (the "Advisers Act").

APPLICANT: The Drexel Burnham Lambert Group Inc. ("DBL Group").

RELEVANT ACT AND ADVISERS ACT SECTIONS: The application requests and order pursuant to sections 6(c) and 6(e) of the Act and section 206A of the Advisers Act exempting companies, escrows, and reserves that are being created pursuant to the reorganization of DBL Group and of certain companies controlled by DBL Group (collectively with DBL Group, the "Debtors") from certain, and in some cases all, provisions of the Act, and exempting New Street Capital Corporation ("New Street") from section 203 of the Advisers Act for limited purposes.

SUMMARY OF APPLICATION: The application requests an order of the Commission, pursuant to sections 6(c) and 6(e) of the Act and section 206A of the Advisers Act, exemption:

(1) A liquidating trust (the "Trust") from all provisions of the Act except sections 9, 17(a), and (d) (as modified herein) and 17(e) ("Modified 17"), 31 (as modified herein) ("Modified 31"), and 36 through 53;

(2) New Street, for so long as it is a majority-owned subsidiary of the Trust and does not make a "public offering" (as defined for the limited purpose of the application) of its securities, from (a) all provisions of the Act except sections 9 as modified herein ("Modified 9"), Modified 17, Modified 31, and 36 through 53 and (b) section 203 of the Advisers Act for the limited purposes stated below ("Modified 203");

(3) DBP Corp., for so long as it is a majority-owned subsidiary of the Trust and does not make a public offering of its securities, from all provisions of the Act except sections 9, Modified 17, and 36 through 53;

(4) DPI L.P. from all provisions of the Act except sections 9, Modified 17, Modified 31, and 36 through 53; and

(5) Each of DPI-A Corp., DPI-B Corp., the Pooled Contingent Assets, Securities Litigation Settlement Fund A, Securities Litigation Settlement Fund B, and certain escrows and reserves, from all provisions of the Act.

FILING DATE: The application was filed on March 26, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 23, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 60 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504–2259, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

DBL Group's Representations

1. DBL Group and certain of its subsidiaries (collectively, "Drexel") are a group of companies that were engaged in a broad range of securities related businesses. These included trading in domestic and foreign securities, commodities, and income and equity products, as well as providing investment banking services. DBL Group is, and has been, primarily a holding company and has dozens of domestic and foreign subsidiaries, including Drexel Burnham Lambert Incorporated ("DBL Inc."), its principal subsidiary. Prior to its filing of a petition for reorganization under chapter 11 ("Chapter 11") of title 11 of the United States Code (the "Bankruptcy Code"), DBL Inc., a register broker-dealer, underwrote public offering of securities, acted as placement agent in connection with private offerings of securities, acted as a market maker, and performed other securities brokerage and investment banking services.

2. Drexel was the subject of various governmental investigations during the latter part of the 1980s. These led to criminal prosecutions of, and the institution by the Commission of civil actions against, DBL Group, DBL Inc., and others. DBL Group and DBL Inc. entered into a plea agreement to resolve the criminal prosecution, and a settlement agreement to resolve the civil action, with respect to DBL Group and DBL Inc. In view of the investigations and as part of these settlements, DBL Group and DBL Inc. made changes in their operating procedures, compliance personnel and procedures, and senior personnel.

3. In early 1990, DBL Group suffered a sudden liquidity crisis because it was unable to continue to borrow funds through either the commercial paper market or bank loans. As a result, on February 13, 1990, DBL Group filed a petition for reorganization under Chapter 11. Shortly thereafter, 19 companies controlled by DBL Group filed petitions for reorganization under chapter 11 or, in some cases, converted involuntary petitions for liquidation under Chapter 7 of the Bankruptcy Code to reorganization proceedings under Chapter 11.

4. The Debtors, the committees representing certain equity holders and unsecured creditors, the Federal Deposit Insurance Corporation (the "FDIC"), the Resolution Trust Corporation (the "RTC"), and counsel for certain litigation claimants (collectively the "Plan Proponents") engaged in complex negotiations which, with the oversight of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), resulted in the formulation of the Debtors' plan of reorganization (the "Plan"). The purpose of the Plan is to permit a reorganized successor company to the Debtors to continue to conduct business while effecting the orderly liquidation of most of the Debtors' assets for the benefit of secured and unsecured debtholders, trade creditors, judgment creditors, equity holders, and litigation and other contingent claimants (the "Claimants"). The Plan has been approved by the requisite number of Claimants in a confirmation vote and by the Bankruptcy Court after a hearing.

5. All of the Debtors' assets except certain excluded assets (the "Excluded assets") [1] will be transferred to the Trust on the consummation date for the Plan (the "Consummation Date"), which is scheduled for April 27, 1992. On the Consummation Date, the Trust's assets will consist of: (a) Cash and cash equivalents in the amount of approximately $1 billion; (b) marketable securities, including high yield securities; (c) all of the outstanding stock of New Street and DBP Corp.; (d) the DPI Note (as defined below); and (e) a 14% interest in the proceeds of

[1] The Excluded Assets consist primarily of bridge loans (most of which are defaulted) and high yield securities, interests in operating or liquidating businesses, partnership interests in investment partnerships, and claims against former Drexel officers and employees and others. As discussed *infra*, the Excluded Assets will vest in New Street, DBP Corp., DPI L.P., or a pool of litigation claims in which the Trust will have an interest.

liquidation of a pool of litigation claims (the "Pooled Contingent Assets"),[2] up to a maximum of $400 million. The Trust will be responsible for prosecuting objections to, litigating, settling, and resolving issues with respect to disputed claims and maintaining various escrows and reserves required by the Plan (the "Escrows and Reserves"). The agreement governing the Trust will permit the Trust to invest available cash, pending distribution, in government and government agency securities, demand deposits, and short-term certificates of deposit ("Temporary Investments"). The Trust will issue certificates of beneficial interest to Claimants in different classes and subclasses having different entitlements to distributions under the Plan. The Trust's board of trustees will consist of three persons (the "Board of Trustees" or the "Trustees") who have been selected by the Plan Proponents other than the Debtors. The Trust will terminate upon the earlier of (i) the date on which all claims assumed or to be paid by it have been allowed or disallowed by final court order and the trustees of the Trust have certified that the purposes of the Trust have been fulfilled, or (ii) the fourth anniversary of the Trust, unless the Bankruptcy Court permits the Trust to continue for no more than three additional two-year periods.

6. New Street, which initially will be a wholly-owned subsidiary of the Trust, will be the successor to DBL Group. Certain of the Excluded Assets will be vested in New Street and will consist of approximately $300 million to $400 million of assets, consisting of bridge loans and high yield securities (collectively, "High Yield Debt") and a limited amount of cash, cash equivalents, and liquid securities. New Street intends to manage its portfolio actively and will seek to influence or control its portfolio companies and participate in restructuring plans. As an adjunct to the management of its investments, New Street will engage in a limited amount of trading in securities (principally high-yield securities) for its own account through a wholly-owned broker-dealer subsidiary. New Street also will advise the Trust and possibly DPI L.P. and may register as an investment adviser under the Advisers Act. New Street will have no capital stock outstanding on the Consummation Date other than common stock issued to the Trust. It will issue warrants on the Consummation Date to former shareholders of DBL Group, which will represent the right to acquire up to 20% of New Street's common stock on a fully diluted basis, assuming exercise of all of the warrants.[3] New Street's initial board of directors will consist of the Trustees and two other persons selected by the Plan Proponents other than the Debtors. For so long as the Trust is a majority stockholder of New Street, the Trustees will elect all members of New Street's board of directors (the "New Street Board"). There is no specified duration of New Street's existence.

7. DBP Corp. will hold the Debtors' interests (the "DBP Interests") in certain of Drexel's operating or liquidating businesses. The DBP Interests will be vested in DBP Corp. on the Consummation Date. Because many of these entities conducted active businesses, as opposed to merely holding securities, DBP Corp. will provide the management necessary in respect of the DBP Interests. DBP Corp. will hold, manage, liquidate, and distribute the DBP Interests in an orderly manner for the Trust's benefit. DBP Corp. will distribute available cash to the Trust as soon as practicable and any cash held pending distribution will be invested in Temporary Investments, provided that reserve requirements that may arise in connection with the liquidation of the DBP Interests may require that assets be held in instruments other than Temporary Investments. DBP Corp. will be governed by one director, who will be appointed and subject to removal at any time by the Trustees and who is expected to be one of the Trustees. The duration of DBP Corp.'s existence is expected to be no longer than that of the Trust.

8. Partnership interests in investment partnerships (the "Drexel Partnership Interests") will be vested in DPI L.P., a limited partnership, on the Consummation Date. DPI L.P. will hold these interests for management and liquidation purposes. The Drexel Partnership Interests consist of general or limited partner interests in approximately 40 partnerships (the "Drexel Investment Partnerships") that hold securities issued by former clients of Drexel. DPI L.P. will not have material amounts of cash available for investment. Any cash or cash proceeds received by DPI L.P. that are not used to pay administrative costs may be invested only in Temporary Investments and held only until the next annual distribution date, unless required to be held in a reserve. DPI L.P. will issue a note to the Trust in the amount of 90% of the book value, as of the Consummation Date, of the Drexel Partnership Interests (the "DPI Note"). To allow for the priority of Claimants established by the Plan, limited partnership interest in DPI L.P. will be issued in two classes. Holders of such interests may elect to hold them directly or through two additional companies, DPI–A Corp. and DPI–B Corp., and will receive common stock of those companies. DPI L.P. will be managed by DPI G.P. Corp. ("DPI G.P."), a corporation whose board of directors initially will consist of one person, who initially will be the President of DPI G.P. Successor directors of DPI L.P. will be elected by the stockholders of DPI L.P. and, in certain circumstances, may be appointed by the Bankruptcy Court upon the motion of a stockholder. DPI L.P.'s President will be engaged as a consultant by the Trust so that the Trust may have the benefit of such officer's historical knowledge of Drexel. Unless sooner dissolved pursuant to its partnership agreement, DPI L.P. shall continue in existence until the earlier of: (a) Ten years, or (b) the date on which the value of the assets of DPI L.P. is less than $30 million and the DPI Note shall have been repaid in full.

9. DPI–A Corp. and DPI–B Corp. are being formed to hold, and to make distributions on, partnership interests in DPI L.P., and on the stock of DPI G.P, all of which stock will be held by DPI–A Corp. and DPI–B Corp. DPI–A Corp. and DPI–B Corp. will be, in effect, corporate conduits through which DPI L.P. and DPI G.P. distributions may be made and tax liabilities that arise as a result of the operations of DPI L.P. and DPI G.P. may be satisfied. Each of DPI–A Corp. and DPI–B Corp. will be governed by a board of directors initially selected by certain of the Plan Proponents other than the Debtors and subsequently elected

[2] The Debtors have agreed to "pool" certain litigation claims that they have with those of certain securities litigation claimants and to prosecute them jointly. The FDIC, the RTC, and counsel for certain other Claimants will act as the administrators of the these pooled claims, which will be liquidated over time. Proceeds from the Pooled Contingent Assets will be distributed among the Trust and, through Securities Litigation Settlement Fund A and Securities Litigation Settlement Fund B, to appropriate securities litigation claimants.

[3] The Plan provides for New Street warrants representing the right to acquire 8.20% to 8.68% of New Street's common stock to be issued to Lambert Brussels Associates Limited Partnership ("Lambert Brussels") as the sole member of a class of interestholders established by the Plan. Because it voted against confirmation of the Plan, Lambert Brussels is not entitled to receive these warrants under the terms of the Plan. Lambert Brussels has appealed confirmation of the Plan and the provisions regarding issuance of warrants to it. Absent success by Lambert Brussels on appeal or other resoluton of Lambert Brussels' dispute, the warrants to be issued represent the right to acquire only between 11.32% and 11.80%, rather than 20%, of the common stock of New Street.

annually by their respective stockholders. Cash proceeds or other cash received by DPI–A Corp. and DPI–B Corp. may be invested only in debt obligations issued or guaranteed by the United States or an agency thereof. DPI–A Corp. and DPI–B Corp. each will dissolve and take such action as is practicable to liquidate within 90 days after the dissolution and winding up of DPI L.P.

10. Two securities litigation settlement funds will be established on the Consummation Date. Securities Litigation Settlement Fund A will be established for the benefit of the securities litigation claimants who have agreed to pool their causes of action with those of the Debtors (the "Pooling Securities Litigation Claimants"). Securities Litigation Settlement Fund B will be established for the benefit of those securities litigation claimants who are not Pooling Securities Litigation Claimants (the "Other Securities Litigation Claimants"). Distributions from these funds (the "Settlement Funds") will be in full satisfaction and discharge of the liabilities of the Debtors in respect of securities litigation claims.

11. The Escrows and Reserves will be established for claims that are not resolved at the Commission Date or to provide for distributions to Claimants in accordance with the Plan. The Escrows and Reserves generally are designed to assure that assets are preserved so that appropriate distributions will be made upon resolution of disputed claims. To the extent that any of the Escrows and Reserves receive and hold cash for any period of time, the cash may be invested in Temporary Investment only.

12. On March 9, 1992, a Stipulation of Settlement (the "Stipulation") was entered by and between Michael Milken and various other defendants (the "Other Settling Participants") in one or more of approximately 180 lawsuits (the "Actions"), brought by Drexel, the FDIC, the RTC, the Commissioner of Insurance of the State of California, and other plaintiffs. The Stipulation provides, among other things, for the settlement of the Actions (the "Global Settlement") as against Michael Milken and the Other Settling Participants, subject to the satisfaction of certain conditions. In general terms, the Global Settlement will not affect the terms of the Plan, the Plan entities, the securities to be issued by the Plan entities, or their governance. However, the Global Settlement will, if it becomes effective, resolve many of the disputed claims against the Debtors and the claims by the debtors against Michael Milken and the Other Settling Participants and certain insurance companies. Therefore, it will effect the number of securities to be issued pursuant to the Plan, the identity of the persons to whom such securities will be issued, and the assets that will be held by the Plan entities. DBL Group believes that if the Global Settlement becomes effective, it would not change the need for, or the reasons supporting, any of the exemptive relief requested in the application.

DBL Group's Legal Analysis

1. With respect to the Trust and DPI L.P., DBL Group seeks relief form all provisions of the Act except sections 9, Modified 17, Modified 31, and 36 through 53. DBL Group submits that the purposes and characteristics of the Trust and DPI L.P. are appropriate grounds for the requested relief. Neither the Trust nor DPI L.P. will hold itself out as an investment company. The Trust will invest any available cash, pending distribution, in Temporary Investments. As discussed above, it is not expected that DPI L.P. will have any material amounts of cash available for investment and any cash that is available for investment will be invested by DPI L.P. in Temporary Investments.

2. With respect to New Street and DBP Corp. DBL Group seeks relief, for so long as they are majority-owned subsidiaries of the Trust and do not make a public offering of their securities,[4] from all provisions of the Act except sections 9,[5] Modified 17, Modified 31, and 36 through 53. DBL Group also seeks an exemption from the registration requirement of the Advisers Act for New Street for the limited purpose of allowing it to serve as investment adviser to DPI L.P. and the Trust. In seeking exemptions for New Street and DBP Corp., DBL Group relies upon their relationship and substantial identify of interest with the Trust and its beneficial holders. Accordingly, the exemptions for New Street and DBP Corp. will expire if they cease to be majority-owned subsidiaries of the Trust or make a public offering of their securities.

3. Exemption from all provisions of the Act is sought for the Pooled Contingent Assets because it is merely a vehicle for prosecuting claims against former officers, directors, and employees of Drexel and others. It is not expected that the Pooled Contingent Assets will have any material amounts of cash available for investment. Exemptive relief from all provisions of the Act is sought for DPI–A Corp., DPI–B Corp., the Settlement Funds and the Escrows and Reserves. DPI–A Corp. and DPI–B Corp. are conduits for distributions from DPI L.P. The Settlement Funds similarly are vehicles created to serve as conduits for Pooled Contingent Assets proceeds. The Escrows and Reserves are designated to account for unresolved litigation and other contingent claims and to assure proper allocation and distribution to Claimants of resulting proceeds.

4. The Trust, New Street, and DPI L.P. would comply with section 31 of the Act and the rules thereunder, except that the financial reports required under the Plan or the exhibits thereto will be substituted for those required by section 30. The Trust Agreement requires the Trustees to cause to be prepared unaudited financial statements for the first three quarters of a fiscal year and audited annual financial statements in accordance with generally accepted accounting principles on a liquidation basis consistently applied. The Trust Agreement also provides that the Trustees must cause to be distributed to all record holders of interests in the Trust and filed with the Bankruptcy Court all of the information included in the Trust's financial statements not already so provided or filed. DPI L.P.'s partnership agreement requires DPI G.P. to provide similar financial statements to each limited partner of DPI L.P., to the Trust, and to the Bankruptcy Court. New Street's by-laws provided that its directors shall cause similar financial statements to be prepared and the Plan requires New Street to submit such

[4] For purposes of the application: (a) The issuance or transfer of the New Street Warrants and the shares underlying such warrants, is not considered a public offering; and (b) any sale of New Street's shares by New Street or the Trust, and any sale of DBP Corp.'s shares by DBP Corp. or the Trust, will be deemed a public offering unless the purchaser or any subsequent transferees of such shares other than an officer, director or employee of New Street, or of DBP Corp., as the case may be, (i) purchases not less than 5% of the then outstanding shares of New Street or of DBP Corp., as the case may be, and (ii) is an "accredited investor" within the meaning of rule 501(a) of regulation D under the Securities Act of 1933, as amended, provided, however, no person shall be deemed an "accredited investor" by reason of meeting (A) the income test in subparagraph 6 of rule 501(a) or the net worth test in subparagraph 5 or rule 501(a) unless, at the time of said person's purchase, the person's individual or joint net worth exceeds $10,000,000; or (B) any of the tests in subparagraphs 1, 2, 3 or 7 of rule 501(a) unless, at the time of said person's purchase, the person's total assets exceed $50,000,000. In addition, an entity shall not be deemed to meet the requirements of subparagraph 8 of rule 501(a) unless all of its equity owners are "accredited investors," as such term is modified in the preceding sentence.

[5] As discussed below, New Street seeks a limited exemption from section 9 for the purpose of permitting it to serve as investment adviser to DPI L.P. and the Trust.

financial statements to the Trust and to all holders of warrants or New Street's common stock. The Plan does not require DBP Corp. to prepare any financial reports because it will be wholly-owned by the Trust, its records will be kept as part of those of the Trust, and DBL Group did not believe that the aggregate value of DBP Corp.'s assets warranted the expense of financial statements separate from those of the Trust.[6] DBL Group believes that the financial reporting requirements outlined above are sufficient to protect the interests of Claimants and any other interestholders in the Trust, DPI L.P., New Street, and DBP Corp., and that full compliance with the reporting provisions of the Act would be unnecessarily burdensome, especially in light of the fact that the Plan does not contemplate the preparation of financial reports in the form required of investment companies under the Act.

5. Under sections 17(a) and 17(d) of the Act, certain transactions between or involving an investment company and its affiliated persons, or affiliated persons of its affiliated persons (collectively, "Affiliated Persons"), must be approved by order of the Commission. Under the order, an affiliated transaction involving the Trust, DPI L.P., New Street, or DBP Corp. will be exempt from the provisions of sections 17(a) and 17(d) of the Act and rule 17d–1 thereunder if such transaction is authorized by the appropriate. "Reviewing Body" for the company involved. The Reviewing Body for affiliated transactions involving the Trust or DBP Corp. would be the Board of Trustees. DBL Group believes that the Trustees' supervision and review provides appropriate oversight mechanisms to prevent abuses of the type intended to be eliminated by the Act, and that the fiduciary standards applicable to the Trustees, as well as the conditions to the relief, provide an appropriate alternative to review by the Commission of affiliated transactions.

6. The New Street board of directors, or a committee thereof, would be the Reviewing Body for New Street. In view of the fact that the members of the New Street board will be the Trustees and two other persons selected by the Plan Proponents other than the Debtors, and that any committee of the New Street board formed for the purpose of authorizing affiliated transactions will be composed of directors who are either Trustees or not "interested persons" (as defined in section 2(a)(19) of the Act) of New Street, DBL Group believes that supervision by the New Street board or committee also provides an appropriate alternative to approval by the Commission of New Street's affiliated transactions.

7. The partnership agreement of DPI L.P. provides for certain affiliated transactions involving DPI L.P. to be authorized by the Bankruptcy Court. Affiliated transactions that are not authorized by the Bankruptcy Court, or for which the Bankruptcy court does not make the findings required by the conditions to the requested relief, would be authorized by the shareholders of DPI G.P.[7] The authorization by the shareholders of DPI G.P., DPI–A Corp., and DPI–B Corp., would include the vote of a majority of the directors of each such corporation who are not "interested persons" of DPI L.P. The DBL Group believes that review by the Bankruptcy Court or by the boards of DPI–A Corp. and DPI–B Corp. is an appropriate substitute for review by the Commission of affiliated transactions of DPI L.P.

8. Section 9 prohibits a person subject to a statutory disqualification from serving as an officer, director, employee, or investment adviser for registered investment companies. Section 9 will apply to the Trust, DPI L.P., New Street, and DBP Corp. as if they were registered investment companies. Section 203 of the Advisers Act generally makes it unlawful for any investment adviser, unless registered, to use the mails or any means of interstate commerce in connection with its business as an investment adviser. Section 203 also permits the Commission to deny registration to a person that is subject to an injunctive decree. DBL proposes that New Street will act as investment adviser to the Trust and possibly DPI L.P. and seeks limited exemptions from section 9 and section 203 of the Advisers Act for that purpose. Because New Street will be the successor to DBL Group, it would be barred by section 9(a)(2) from serving as an investment adviser to the Trust and DPI L.P. New Street's officers and directors were not, as individuals, subject to the judgment against DBL Group and DBL Inc. or any other disqualification under section 9 and section 203 of the Advisers Act. Moreover, New Street would be required to obtain an additional exemption from the provisions of section 9 and section 203 of the Advisers Act before providing investment advisory services to any other registered investment companies. Thus, DBL Group believes the limited exemptions described above are justified.

9. In support of its request for relief, DBL Group contends that interested parties are adequately protected as a result of the active participation of such parties in the Plan negotiations and the continuing supervision of the Bankruptcy Court and the United States District Court for the Southern District of New York after the Consummation Date. DBL Group also asserts that the continued compliance by the Trust, New Street, DPI L.P., and DBP Corp. with certain provisions of the Act is consistent with the Plan and provides protection for interested parties. Accordingly, DBL Group believes that the issuance of the requested order pursuant to sections 6(c) and 6(e) of the Act and section 206A of the Advisers Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of such Acts.

DBL Group's Conditions

DBL Group agrees that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. A transaction otherwise prohibited by section 17(a) or section 17(d) of the Act or rule 17d–1 thereunder, involving the Trust, DBP Corp., New Street, DPI L.P., or any of their controlled companies, and one or more Affiliated Persons of that entity or entities, would be exempt from the provisions of sections 17(a) and 17(d) of the Act and rule 17d–1 thereunder if such transaction (a) involving the Trust or DBP Corp. is authorized by the Board of Trustees, (b) involving New Street is authorized either by the New Street Board, including the vote of a majority of its directors who are Trustees of the Trust or who are not "interested persons" (as defined in section 2(a)(19) of the Act) of New Street, or by the New Street Committee; [8] and (c) involving DPI L.P.

[6] Although the Plan does not require that the purchaser, if any, of a minority interest in DBP Corp. receive financial reports with respect to DBP Corp., DBL Group believes that, because of the restrictions on the persons, who are eligible to purchase such an interest while the exemption is in effect, such persons would be in a position to protect their interests by negotiating to receive the financial information, if any, they wished to receive.

[7] Since DPI L.P. is a partnership, it does not have a board of directors. The board of directors of DPI G.P. will consist of one person, who will be an interested person of DPI L.P. Thus, the boards of DPI–A Corp. and DPI–B Corp. were considered to be the most appropriate reviewing bodies in cases in which the Bankruptcy Court is not the reviewing body.

[8] Any New Street Committee will be comprised of at least three members, and all of its members will be directors who are Trustees of the Trust or who are not interested persons of New Street.

is authorized by the Bankruptcy Court, to the extent required by the partnership agreement of DPI L.P., or, if not so authorized by the Bankruptcy Court, by the vote of the holders of at least 90% of the shares of DPI G.P. (the authorization by such holders, DPI–A Corp. and DPI–B Corp., to include the vote of a majority of the directors of each such corporation who are not "interested persons" of DPI L.P.).

2. No member of the Reviewing Body who is a party to any transaction authorized as described in condition 1 or who has a direct or indirect financial interest therein may participate in the vote or discussion with respect to such transaction.

3. In connection with each authorization as described in condition 1, the Trust, DBP Corp., New Street, or DPI L.P., as the case may be, shall inform its Reviewing Body of: The identity of all of its known Affiliated Persons who are parties to, or have a direct or indirect financial interest in, the transaction; the nature of the affiliation; and the known financial interest of such persons in the transaction.[9]

4. The authorization by the appropriate Reviewing Body of each section 17(a) and 17(d) transaction described in condition 1 shall be on the basis that: (a) The terms thereof, including the consideration to be paid or received, are reasonable and fair to the Trust, DBP Corp., New Street, DPI L.P., or the controlled company in question, as the case may be; and (b) the transaction is consistent with the Plan.

5. The Reviewing Body shall keep records that include a description of each transaction authorized as described in condition 1, its determinations, the information or materials upon which its determinations were based, and the basis therefor, provided that with respect to any of DPI L.P.'s Affiliated Transactions authorized by the Bankruptcy Court, the court's records with respect to such transactions shall serve as the records required to be maintained under Modified 17.

6. In the event that the Bankruptcy Court does not approve a section 17(a) or section 17(d) transaction involving DPI L.P., or approves such transaction on a basis or bases that do not include the bases described in the application, then the transaction cannot be effected unless authorized by the requisite vote of the shareholders of DPI G.P., as described in condition 1.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7882 Filed 4–1–92; 4:36 pm]

BILLING CODE 8010–01–M

[9] The word "known" is utilized because there may be situations in which, notwithstanding due inquiry, the Trust, DBP Corp., New Street, or DPI L.P., as the case may be, will be unable to determine the identity and the extent of the financial interests of all Affiliated Persons due to the complexity of relationships and holdings, or due to such company's inability to obtain information necessary to such determination from persons it does not control.

[Release No. 35–25504]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 27, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 20, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–7679)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company; Arkansas Power & Light Company, 425 West Capitol Street, Little Rock, Arkansas 72201, Louisiana Power & Light Company, 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39215–1640 and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, electric public-utility subsidiary companies of Entergy (collectively, "Operating Companies"); System Fuels, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113, the Operating Companies' fuel supply subsidiary company; Entergy's subsidiary service company, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113; its subsidiary nuclear generating company, System Energy Resources, Inc., Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213; and its subsidiary nuclear service company, Entergy Operations, Inc. ("Entergy Operations"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213 have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 42 and 45 thereunder to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 45, 86–91, 93 and 94 thereunder.

By order dated June 5, 1990 (HCAR No. 25100) ("Order"), Entergy was authorized, among other things, to organize Entergy Operations and to enter into a loan agreement ("Loan Agreement") whereby Entergy Operations would borrow and reborrow from Entergy, from time-to-time through June 30, 1992, up to an aggregate principal amount of $15 million outstanding at any one time. The Loan Agreement was executed, and, pursuant to that agreement, Entergy Operations issued a note ("Note") as evidence of such borrowing on June 6, 1990, which bears interest at the prime rate, payable quarterly on unpaid principal amounts, and matures on June 30, 1992.

Entergy Operations now proposes to enter into an amendment to the Loan Agreement ("Amendment"), which will extend the expiration date of the borrowing period under the Loan Agreement to November 30, 1992, and which will provide for the issuance of a new note ("New Note") stated to mature on November 30, 1992. The Amendment will also state that the New Note will replace and supersede the Note and represent the borrowings of Entergy Operations from Entergy under the Loan Agreement. Except as specifically amended, the Loan Agreement will continue in full force and effect, and the terms as authorized by the Commission in the Order will remain unchanged. The purpose of the Amendment and New Note is to enable Entergy Operations to fund its operations under the Entergy System Money Pool during the period July 1, 1992, through November 30, 1992.

Monongahela Power Company, et al. (70–7956)

Monongahela Power Company ("Monongahela"), located at 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown, Maryland 21740 and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601 (collectively, the "APS Companies"), all wholly owned subsidiary companies of Allegheny Power System, Inc. ("Allegheny"), 12 East 49th Street, New York, New York 10017, a registered holding company, have filed a declaration under sections 6(a), 7 and 12(d) of the Act and rules 44 and 50(a)(5) thereunder.

The APS Companies propose to issue a non-negotiable promissory note or notes (the "Notes") with maturities of not more than 30 years, at any time and from time to time on or before December 31, 1994, under an exception from the competitive bidding requirements of rule 50 under subsection (a)(5), in connection with and to support the issuance and sale by the County Commission of Harrison County (the "Harrison Commission") of one or more series of pollution control revenue bonds (the "Bonds") in an aggregate principle amount of $180 million.

The Bonds will be issued for the financing of certain sludge processing, handling and disposal facilities, waste water treatment facilities and associated land, interests in land and equipment (the "Facilities") which are part of a project involving the installation of a flue-gas desulfurization system on three units at the Harrison Power Station ("Harrison") in Harrison County, West Virginia.

Harrison is jointly owned by the APS Companies with the following undivided interests: West Penn—42.24%; Potomac Edison—32.76%; and Monongahela—25%. The cost of the Facilities will be divided among the APS Companies in accordance with each Company's percentage ownership of Harrison. It is expected that the issue in respect of each APS Company's interest in Harrison will not exceed $45 million for Monongahela, $59.4 million for Potomac, and $75.6 million for West Penn.

The Bonds will be issued under a separate trust indenture with a corporate trustee and shall be sold in one or more series at such times and with terms regarding principal amounts, prices, redemption, sinking funds, no-call and other terms as shall be approved by each APS Company. The indentures will also provide that all the proceeds of the sale of the Bonds by the Harrison Commission must be applied to the cost of the Facilities, including fees and expenses associated therewith and, to the extent deemed desirable, the payment or pre-payment of outstanding short-term debt, if any, issued for such purposes. The Bonds will be in registered form and will bear interest semi-annually.

In connection with the issuance of each series of Bonds, each APS Company will issue its Notes corresponding to each series of Bonds in respect of principal amount, interest rates and redemption provisions (which may include a special right of the holder to require the redemption or repurchase of the Bonds at stated intervals), and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Payments on the Noted will be made to the trustee under each APS Company's indenture and applied by the trustee to pay the maturing principal and redemption prices and interest and other costs of the Bonds with respect to that APS Company as the same become due. Each APS Company also proposes to pay any trustees' fees or other expenses incurred by the Harrison Commission. The obligations of each APS Company to pay for its interest in the Facilities is several and not joint, and the Notes delivered by each APS Company are the obligations solely of that Company.

Each APS Company's Notes will be secured by a second lien of that APS Company's interest in the Facilities (subject to the lien of the indenture securing that APS Company's First Mortgage Bonds). Alternatively, if market conditions so warrant, each APS Company may deliver to the trustee in lieu of its Noted a First Mortgage Bond corresponding to the series of the Harrison Commission's Bonds secured and supported by such First Mortgage Bond.

To the extent feasible, the APS companies intend to effect a permanent long-term financing of the Facilities. The APS Companies state that they presently intend to issue the Bonds with fixed interest rates, however, market conditions prevailing at the time of the offering may warrant the issuance of any series of the Bonds with "floating" interest rates during all or a portion of the stated life of such series of the Bonds based on a specified index as well as provisions permitting the bondholders to require the redemption or repurchase of the Bonds at stated intervals. If the interest rates prevailing at the time of the financing are such that it is deemed undesirable to issue Notes and Bonds on a floating rate basis, it may be advantageous to complete the proposed financing in two phases: The issuance of Bonds and Notes with maturities of three years of less, and the refunding of those short-term Bonds and Notes at or prior to their maturity with long-term Bonds and Notes having a maturity not to exceed thirty years.

To the extent the funds derived from the sale of Bonds proposed herein or from any additional solid waste disposal revenue bonds which may be sold in the future by the Harrison Commission are insufficient to pay the total cost of the Facilities, the APS Companies will be required to fund the completion of the Facilities through a combination of sources, including internally-generated funds, first mortgage bond and preferred stock issues, borrowings from banks and the sale of their common stock to Allegheny.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7823 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18635/File No. 812–7867]

ML Life Insurance Company of New York, et al.

March 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: ML Life Insurance Company of New York ("ML of New York"), ML of New York Variable Life Separate Account II (the "Separate Account" or the "Account") and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) granting exemptions from sections 12(d)(1), 26(a)(2) and 27(c)(2) of the Act and pursuant to section 17(b) granting an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the Separate Account to purchase shares ("units") of investment companies organized as unit investment trusts ("Trusts"); to permit ML of New York to recover amounts, through asset charges against the Separate Account, paid by ML of New York to the Trusts' sponsor in connection with acquiring Trust units for the Separate Account; to

permit the Separate Account to purchase units of the Trust from and sell units of the Trust to, an affiliate; and to extend such relief to any other separate investment account established or acquired by ML of New York with which the Separate Account may be merged or combined or to which assets supporting variable life insurance contracts issued through the Separate Account may be transferred.

FILING OF THE APPLICATION: The application was filed on February 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by 5:30 p.m. on April 21, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, ML Life Insurance Company of New York, 800 Scudders Mill Road, Plainsboro, New Jersey 08536, Attention: Barry G. Skolnick, Esq., Senior Vice President and General Counsel.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Special Counsel, at (202) 272–2026, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. ML of New York is a stock life insurance company organized under the laws of the State of New York. ML of New York is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. ML of New York is authorized to do business in eleven states, and offers life insurance and annuity contracts in certain of those states. ML of New York will issue various flexible premium variable life insurance contracts (collectively, the "Contracts") through the Separate Account. The assets of the Separate Account, will be derived solely from the sale of the ML of New York Contracts together with any necessary advances made by ML of New York in connection with the operation of the Separate Account.

2. The Separate Account, organized as a unit investment trust, was established on December 4, 1991 to provide the basic funding to support benefits under ML of New York Contracts. Currently, it is expected that the Separate Account will consist initially of 28 investment divisions ("Investment Divisions" or "Divisions"). All assets held in the Separate Account's Investment Divisions will be used to purchase shares issued by the Merrill Lynch Series Fund, Inc. ("Series Fund") or units of separate unit investment trusts. The unit investment trusts ("Series") will be registered as a single unit investment trust ("Trust"). Merrill Lynch, a wholly owned subsidiary of Merrill Lynch & Co., Inc., which is also the corporate parent of ML of New York, is the sponsor and depositor of the Trust. Merrill Lynch also will act as the principal underwriter of the Contracts.

3. Contract benefits will be determined from the investment base of the Contracts. Initially, the investment base will equal the premium paid including the Contract loading. Thereafter, the investment base will be adjusted daily to reflect the net rate of return of the chosen Investment Divisions of the Separate Account, any premium payments made, and any Contract loans, loan repayment and partial withdrawals. The death benefit and cash surrender value under a particular Contract will vary based upon the investment performance of the chosen Separate Account Investment Divisions funding the Contract.

4. Other versions of the Contracts may be created in the future which provide for different structures for premium payments, such as scheduled payments or totally flexible premium payments.

5. Contract owners will be permitted to allocate their investment base among the various Investment Divisions which invest in the underlying vehicles, including both the Series Fund and the Series of the Trust. The Contract loading will be deducted from the premium, but advanced by ML of New York to the Separate Account and included in the Contract owner's investment base. The Contract loading will then be deducted in equal installments on the next ten Contract anniversaries. Other charges deducted from the Contract include an asset charge to cover the mortality, expense and guaranteed benefit risks and a charge against the assets of each Division investing in the Trust, currently at an effective annual rate of .34 (which can be increased to no more than .50). This charge compensates ML of New York for its costs in acquiring units of the Trust for those Divisions. The mortality and expense risk charge and the asset charge assessed against each Division investing in the Trust are deducted on a daily basis for purposes of determining a Contract's net rate of return.

6. Each Series of the Trust will be comprised of U.S. Treasury securities which have been stripped of their coupons ("zero coupon bonds"). Currently, there are 18 Series with maturities ranging from approximately 1992 to 2011. It is anticipated that additional Series will be created in the future. By purchasing a portfolio of such securities, an interest rate may be "locked-in" for that Series. The Series will provide Contract owners an opportunity to allocate all or a portion of the investment base of their Contract to an investment vehicle that will have a fixed yield for a specified period of time.

7. As sponsor and depositor for the Trust, Merrill Lynch will deposit zero coupon bonds (or contracts to purchase such securities) in each Series immediately prior to the initial offering of units of that Series to the Separate Account. An evaluator will be appointed to value the securities held in each Series and to compute the price of units of each Series. The evaluator, Interactive Data Services, Inc., is not affiliated with Merrill Lynch or ML of New York.

8. Units of the Trust will be sold only to the Separate Account, other separate accounts of ML of New York, Variable Account A of Monarch Life Insurance Company, and separate accounts of Merrill Lynch Life Insurance Company. Units of each Series will be priced in the customary manner for unit investment trusts. Units sold as a part of a primary offering, as well as units redeemed, will be priced in accordance with Rule 22c–1 under the Act at a price equal to the "current net asset value next computed after receipt of an order to purchase or redeem" as defined in Rule 2a–4. For purposes of determining the current net asset value of a unit, the underlying portfolio securities will be valued in accordance with the usual practice followed by similar unit investment trusts: If market quotations are readily available, the public offering price of the units will be based upon the current market value of the underlying securities using the offering side evaluation, and the redemption price of the units will be based upon the current market value of the underlying securities using the bid side evaluation; otherwise, the

underlying securities will be valued at fair value.

9. In addition, Merrill Lynch, by agreement, will maintain a secondary market in Trust units of sufficient size and duration so that: (1) When the Separate Account has net redemptions in an Investment Division investing in a particular Series of the Trust, Merrill Lynch will always repurchase those Trust units, rather than requiring the Account to redeem units in order to fulfill Contract owners' transactions; and (2) Merrill Lynch will redeem units with the Trustee only in an amount that matches the value of securities held in a particular Series to be sold to satisfy the redemption, thus creating no remainder to be reinvested. The pricing of units sold, repurchased, or resold by Merrill Lynch in the secondary market will also be in accordance with the provisions of Rule 22c-1. In the secondary market maintained by Merrill Lynch, any units of the Trust repurchased from the Separate Account will be repurchased at a price calculated in a manner similar to that used to calculate the offering price: The current net asset value, valuing underlying securities at their offering side evaluation. Units repurchased from the Separate Account may be resold to the Separate Account on the same basis as if they were original units: At the current net asset value, valuing underlying securities at their offering side evaluation.

10. The Separate Account will purchase units of each Series of the Trust for placement in the corresponding Division based upon the net transactions of Contract owners. The total offering price of units placed in the Separate Account, including units sold in a primary offering or a secondary market offering, will include a "transaction charge" to be paid directly by ML of New York to Merrill Lynch. Unit investment trusts are generally sold to the public at a price which includes a sale charge, typically ranging between three and five percent. However, at the time of the Separate Account's purchase of units of the Trust, the Account will not pay any sales charge; instead ML of New York will pay an amount directly to Merrill Lynch out of its general account assets to compensate Merrill Lynch as the sponsor and principal underwriter of the Series. The amount paid will be limited by agreement to an amount, not to exceed a specified percentage of the current net asset value of the Trust units. Thereafter, ML of New York will seek to recover the amounts advanced through an asset charge levied against the assets of the Separate Account held in the Investment Divisions. This charge will be cost-based with no anticipated element of profit for ML of New York. However, if experience proves different than anticipated, the amount of this charge may vary to reflect the change in actual costs, but, in no event will it exceed an annual rate of .50 of the average daily net assets of each of the Investment Divisions investing in the Trust. ML of New York has elected to treat this acquisition cost in this manner because it believes it produces a more stable yield to and more equitable results for Contract owners.

11. Section 12(d)(1)(A) of the Act, as here relevant, generally restricts the ability of a registered investment company to acquire the securities of any other investment company to acquire the securities of any other investment company. However, section 12(d)(1)(E) removes such restrictions if, *inter alia,* the acquired securities are the only securities held by a registered unit investment trust that issues two or more classes of securities, each of which provides for accumulation of shares of a different investment company.

12. Typically, the unit investment trusts which have relied upon the section 12(d)(1)(E) exception have invested in underlying management companies. The structure proposed by the Applicants will involve the Separate Account investing in a management company (the Series Fund) as well as another unit investment trust (the Trust).

13. The Applicants assert that the investment by a unit investment trust in another unit investment trust should not affect the availability of the section 12(d)(1)(E) exception. The statutory exception does not specify the type of investment company in which the unit investment trust must invest; rather, the exception depends on the classification of the acquiring company. That requirement is met in the instant case. However, to remove any doubt, the Applicants have requested an exemption from the provisions of section 12(d)(1), to the extent necessary to permit the Separate Account to acquire units of the Trust.

14. The Applicants assert that in providing the exception contained in section 12(d)(1)(E), Congress recognized the legitimate and beneficial purposes of one investment company investing in another investment company. The Applicants represent that in this particular case, the two tier structure provides a benefit to the investors in the Separate Account by allowing greater flexibility in investment opportunities, without creating the abuses targeted by section 12 of the Act. The Applicants assert that the proposed structure is not a method for layering of charges, leveraging control or assessing overlapping charges. Rather, the Applicants asset, it is a method for allowing the assets supporting a Contract to be invested in a specific vehicle, structured in a way that will "lock in" interest rates.

15. The Applicants will amend the application during the notice period to asset that although Merrill Lynch is an affiliated person of the depositor of the Separate Account, the arrangements under which the Separate Account purchases and sells units in the Trust were negotiated between Merrill Lynch and Monarch Life Insurance Company ("Monarch") and its Variable Account A prior to the time that ML of New York established the Separate Account. Therefore, the transaction charge for units of the Trust are in effect the result of arm's-length negotiations between Merrill Lynch and Monarch, which are presumed to yield fair values. Moreover, the setting up this structure, the agreements between Merrill Lynch and Monarch and between Merrill Lynch and ML of New York (with respect to the other ML of New York separate account that invests in units of the Trust) required, and the agreement between ML of New York and Merrill Lynch (with respect to the Separate Account) will require, that the terms of the transactions be at least as good, if not better, than the separate accounts or the Separate Account, as the case may be, could receive from other parties.

16. As stated above, the Applicants propose that ML of New York directly pay to Merrill Lynch, in connection with the acquisition of units by the Separate Account, an amount out of its general account assets to compensate Merrill Lynch as sponsor of the Trust. ML of New York will seek to recover such amounts from the Separate Account through an asset charge levied against the Investment Divisions investing in the Trust. Sections 26(a)(2) and 27(c)(2) place restrictions on the amounts and types of deductions that can be made from the assets of any unit investment trust. Rule 6e–3(T) modifies those restrictions to provide an exception for a fee for administrative services provided that the fee is not greater than the expenses, without profit, actually paid by the life insurer.

17. Although the Applicants believe that the proposed asset charge may be assessed in conformance with the exemptions provided by Rule 6e–3(T), they recognize that the asset charge may not fall squarely within the type of administrative fees envisioned under the

Act and Rule 6e–3(T). Therefore, to the extent necessary, the Applicants request an order granting relief from the provisions of sections 26(a)(2) and 27(c)(2) of the Act to permit the assessment of the asset charge.

18. The Applicants submit that such exemptive relief meets the standards of section 6(c) of the Act in that it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The payment by ML of New York of amounts to Merrill Lynch to compensate it for its expenses and services as sponsor of the Trust is necessary to induce Merrill Lynch to create that Trust, to implement the operational procedures for the Trust and to continue to maintain a secondary market for Trust units. The compensation will reimburse Merrill Lynch for operational and overhead expenses, and legal, accounting and evaluator's fees. None of the compensation received by Merrill Lynch is designed as reimbursement of distribution expenses or compensation for Merrill Lynch's sales efforts. Moreover, the amount of the compensation was effectively determined on the basis of arm's-length negotiations.

19. ML of New York represents that its determination to pay the amounts directly and recover the cost through an asset charge, rather than having the Separate Account pay the compensation to Merrill Lynch upon the purchase of the units, was made for the benefit of Contract owners. The Applicants believe that through this system, Contract owners are able to receive yields that are more stable, since the expenses of the Division will remain fairly consistent rather than fluctuating with the level of net purchases of Trust units by the Separate Account. Moreover, the Applicants believe that the proposed method will create more equitable results among Contract owners by allocating a proportionate share of the acquisition expenses to all Contract owners allocating premiums to the Investment Divisions investing in a Series of the Trust, rather than permitting the expenses incurred by individual Contract owners to vary based upon the timing of their particular allocation.

20. The Applicants believe that the proposed asset charge is a reasonable and proper charge designed to cover expenses that are properly viewed as a cost of operating and administering the Separate Account. As noted above, the charge will be cost based with no anticipated element of profit for ML of New York. Accordingly, Applicants believe the requested relief meets the standards set by section 6(c) of the Act.

21. Section 17(a) of the Act prohibits any affiliated person or any affiliated person of such a person, acting as principal, from selling to or purchasing from a registered investment company, any security or other property. Section 17(b) of the Act provides that the Commission, upon application, may exempt transactions from the provisions of section 17(a) if evidence establishes that the terms of the proposed transactions, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

22. The Applicants state that all the outstanding voting stock of both Merrill Lynch and ML of New York is beneficially owned by Merrill Lynch & Co., Inc., and thus Merrill Lynch and the Separate Account are affiliated persons within the meaning of section 2(a)(3) of the Act. The Applicants assert, however, that the conditions set forth in section 17(b) of the Act are met by the proposed transactions between Merrill Lynch and the Separate Account, and therefore the Applicants request such an order from the Commission.

23. The Applicants assert that the consideration the Separate Account will pay Merrill Lynch upon the purchase of Trust units and the consideration the Separate Account will receive from Merrill Lynch upon resale of Trust units, and the sales charge indirectly paid by the Separate Account to Merrill Lynch, will be fair and reasonable and will not involve overreaching on the part of any person concerned. The price at which the Separate Account will purchase and resell units from and to Merrill Lynch will be based upon the offering side evaluation of the underlying securities. The Applicants state that a qualified independent evaluator will determine the offering side valuation of the underlying securities for any purchase or sale of units by the Separate Account and that market prices for the underlying securities are usually readily available. The Applicants assert that as a result of this independent evaluation of the worth of the underlying securities, the Separate Account will be buying and selling units from Merrill Lynch at a price determined to be at "market." The Applicants state that this evaluation should eliminate any possibility that Merrill Lynch would sell units to the Separate Account at an inflated price or purchase units from the Separate Account at a price below their market value.

24. The Applicants further state that Merrill Lynch will not be able to influence the Separate Account to purchase or sell units that the Separate Account would not otherwise have purchased or sold. The Applicants state that the Separate Account will only purchase units from Merrill Lynch as Contract owners choose to direct their premium payments for Contracts or investment base of existing Contracts to Investment Divisions of the Separate Account that correspond to a Series. Similarly, the Separate Account will only sell units when owners surrender their Contracts, reallocate their investment base from those Investment Divisions, take out a Contract loan, or when the insured dies. Therefore, the Applicants assert, the concern underlying Section 17(a) that the decision to purchase or sell securities by an investment company may be influenced by the interests of an affiliate, if the securities are purchased or sold by or from an affiliate, is inapposite here.

25. The applicants note that, while ML of New York and Merrill Lynch are affiliated persons, they have separate management and each is operated as separate "profit center." The Applicants represent that the compensation of sales persons selling the Contracts is not dependent upon nor affected by the particular investment vehicle or vehicles to which owners allocate the premiums for or the cash value of the Contracts. Therefore, the Applicants assert that sales persons are not expected to have a preference as to which investment vehicle Contract owners select.

26. The Applicants believe that the requested exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Therefore, the Applicants ask that the requested exemption from the provisions of section 17(a) be granted.

27. Finally, the Applicants request that the exemptive relief requested above, subject to the same conditions, representations and undertakings set forth with respect to the Separate Account, also apply to any other separate investment account ("Successor Account") established or acquired by ML of New York with which the Separate Account may be merged or combined or to which assets supporting any class of Contracts or portion thereof may be transferred. This relief is being

requested to ensure that the exemptive relief will continue to be available to ML of New York and Merrill Lynch with respect to any class of Contracts or portion thereof after any such merger, combination, or transfer, and that such relief will be available to the Successor Account supporting such Contracts to the same extent as the Separate Account.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7820 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC– 18636; 812–7868]

ML Life Insurance Company of New York, et al.

March 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: ML of New York Variable Life Separate Account II (the "Account"), ML Life Insurance Company of New York ("ML of New York") and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 2(a)(32), 22(c) and 27(c)(1) of the 1940 Act and rules 6e-3(T) and 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of the balance of a deferred premium tax charge upon the surrender of certain variable life insurance contracts.

FILING DATE: The application was filed on February 11, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 21, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Barry G. Skolnick, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, on (202) 272–5415, or Wendell M. Faria, Deputy Chief, on (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. ML of New York is a stock life insurance company organized under the laws of the State of New York. ML of New York is an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. and has its home office located in New York City.

2. The Account was established by ML of New York on December 4, 1991 as a separate investment account to provide the basic funding to support benefits under certain variable life insurance contracts (the "Contracts"). ML of New York is the depositor and sponsor of the Account. The Account will register with the Commission as a unit investment trust. In the future, contracts substantially similar to the Contracts may be funded through the Account and any other separate investment account ("Successor Account") established or acquired by ML of New York with which the Account may be merged or combined or to which assets supporting any class of Contracts or portion thereof may be transferred.

3. The Account will consist of one or more investment divisions and all assets held in the Account's investment divisions will be used to purchase shares issued by one of the ten portfolios of Merrill Lynch Series Fund, Inc., or units in designated trusts in The Merrill Lynch Fund of Stripped U.S. Treasury Securities, Series A through H (the "Trusts"). The Trusts are sponsored by Merrill Lynch.

4. ML of New York imposes a charge ("Deferred Contract Loading") on the initial premium on the Contracts and on any additional payment received on those Contracts. The Deferred Contract Loading equals 9.0% of each payment (11% in the case of joint insureds). The amount of the charge consists of a sales load of 4.5% (6.5% in the case of joint insureds), a 2.5% charge for premium taxes and a 2.0% charge for federal income taxes measured by premiums. Although chargeable to the initial premium and each additional payment, the deduction of the premium tax charge is deferred and is deducted from the Contract's investment base in ten equal installments of .25% on each of the first ten anniversaries on or following receipt and acceptance of that payment. The 2.5% premium tax charge is cost based and ML of New York anticipates no element of profit from the charge.

5. Because no premium tax is deducted from the initial premium or any additional payments before allocation to the Account, a Contract's investment base in effect includes the premium tax for those premium payments (as part of the Deferred Contract Loading). The Contract's cash surrender value, however, excludes the portion of the investment base equal to the Deferred Contract Loading not yet deducted. If the Contract owner surrenders a Contract before the Deferred Contract Loading has been fully deducted, the balance of the Deferred Contract Loading not yet deducted will be subtracted from the Contract's investment base in determining the net cash surrender value payable to the Contract owner.

Applicants' Legal Analysis

1. The Applicants recognize that the deduction of the balance of the Deferred Contract Loading with respect to the premium taxes in determining the net cash surrender value payable to a Contract owner on surrender could be characterized as a "surrender charge". Therefore, Applicants request an exemption from sections 2(a)(32), 22(c) and 27(c)(1) of the 1940 Act and rules 6e-3(T)(b)(12), 6e-3(T)(b)(13)(iv) and 22c–1 thereunder to the extent necessary to permit the net cash surrender value to reflect a deduction of the balance of the deferred premium taxes upon surrender of the Contracts or any substantially similar contracts issued through the Account or any Successor Account.

2. Applicants believe that the deduction of the balance of deferred premium taxes upon surrender of a Contract should not be viewed as a "surrender charge" because the charges comprising the deferred premium taxes are incurred and fixed at the time ML of New York receives and accepts the initial premium or any additional payments, and are ultimately deducted from the Contract's investment base regardless of whether the Contract is surrendered. Applicants maintain that ML of New York's deferral of the timing of the deductions for these charges is

merely intended to increase the initial mount allocated to the Account by the amount of the Deferred Contract Loading and thereby enable Contract owners to benefit from any favorable investment performance on the deferred premium taxes.

3. Applicants assert that deducting the balance of Deferred Contract Loading in determining the amount payable to a Contract owner upon surrender of the Contract in no way restricts the Contract owner from receiving on redemption his or her proportionate share of the value of the Account funding the Contract. Applicants maintain that the deferred premium taxes deducted at the time of surrender consist of charges that were chargeable to premiums when paid, but were intended to be deducted over a period of time rather than up-front. Thus, Applicants assert that the Contract owner's proportionate share in the Account should not be deemed to include the portion of the investment base equal to the Deferred Contract Loading not yet deducted. Applicants assert that every Contract owner benefits from the fact that the premium tax chargeable to a payment is deducted annually in installments over a period of years or, upon surrender, if the Contract owner surrenders the Contract before all annual deductions have been made. Contract owners pay no more in premium tax charges than they would have paid if the premium tax charges were deducted from premium payments. Thus, Applicants argue that the Contract owners have received an advantage because the amount of their investment in the Account was not initially reduced as it would have been had these charges been deducted from premium payments before allocation to the Account.

4. Applicants believe that a Contract providing for a cash surrender value reflecting the deduction of premium tax charges upon surrender of a Contract is consistent with the definition of a "redeemable security" within the meaning of section 2(a)(32) and 27(c)(1) of the 1940 Act, as adapted for life insurance by paragraphs (b)(12) and (b)(13)(iv) of rule 6e-3(T).

5. Rule 22c–1, in pertinent part, prohibits a registered investment company which issues a redeemable security from redeeming such security except at a price based on the current net asset value of such security which is next computed after receipt of the tender of such security. Rule 6e-3(T)(b)(12), as relevant here, affords exemptive relief from rule 22c–1 with respect to "redemption procedures" which, in the context of variable life insurance, includes surrender and exchange procedures. Thus, rule 22c–1 and rule 6e–3(T)(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. Although the exemptive relief granted is broad, Applicants recognize that rule 6e–3(T)(b)(12) could be read, in conjunction with other paragraphs of rule 6e–3(T), as being premised upon the absence of a deduction of deferred charges when the amount payable on surrender is determined.

6. Regarding the timing requirement of Rule 22c–1, Applicants, consistent with their current procedures, will determine the net cash surrender value under a Contract in accordance with rule 6e–3(T)(b)(12)(i) and on a basis next computed after receipt of the Contract and the written request of the Contract owner for surrender. The Commission's purpose in adopting rule 22c–1 was to minimize, in connection with the distribution, redemption and repurchase of securities of a registered investment company: (i) The dilution of the interests of the other security holders in such investment company; and (ii) speculative trading practices that are unfair to such holders. Applicants' procedure of deducting the balance of deferred premium taxes in determining the net cash surrender value payable to a Contract owner would in no way have the dilutive effect which rule 22c–1 is designed to prohibit, because a surrendering Contract owner would "receive" no more than an amount equal to the net cash surrender value determined pursuant to the formula set out in his or her Contract, after ML of New York's receipt of the Contract owner's surrender request and the Contract. Furthermore, variable life insurance contracts, by their nature, do not lend themselves to the kind of speculative short-term trading that rule 22c–1 was intended to deter, and even if they could be so used, the deduction of deferred charges upon surrender would discourage rather than encourage any such trading.

7. On the foregoing basis, Applicants believe that their procedure of deducting the balance of the deferred premium taxes in determining the net cash surrender value payable to a Contract owner is not inconsistent with the policy and purposes of rule 22c–1.

8. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7821 Filed 4–3–92; 8:45am]

BILLING CODE 8010–01–M

[Release No. 35–25503; International Series Release No. 378]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 27, 1992.

Notice is hereby given that the following filing(s) has/have been made with the commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 20, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCEcorp, et al. (70–7959)

SCEcorp, 2244 Walnut Grove Avenue, Rosemead, California 91770, a California public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, and Mission Energy Company ("MEC"), 18872 MacArthur Boulevard, suite 400, Irvine, California 92715–1448, its wholly owned indirect nonutility California subsidiary company, have filed an application requesting an order under section 3(b) of the Act granting an unqualified exemption from all provisions of the Act for two to-be-formed indirect Australia subsidiaries of MEC: Loy Yang B

Venture ("Venture"), which will acquire up to a 40% ownership interest in certain electric generating assets in Australia; and Mission Energy Management Australia, Ltd. ("MEMA"), which will operate the generating assets. Alternatively, the applicants request an order of the Commission approving the proposed acquisition under sections 9(a)(2) and 10 of the Act.

MEC, through wholly owned subsidiaries, owns interests in a number of facilities exempted from the Act pursuant to regulations issued under the Public Utility Regulatory Policies Act of 1978 and two independent power projects in the United States.[1] In addition to other domestic projects, MEC is pursuing foreign electric power development projects, including the Australian project that is the subject of this application.

The State Electricity Commission of Victoria ("SECV"), the state-owned electric utility serving the State of Victoria, Australia, is currently developing the Loy Yang generating complex in the Latrobe Valley. The generating complex will include a 1000 megawatt coal-fired electric generating facility ("Power Station") consisting of two 500 megawatt units. Unit 1 of the Power Station is expected to begin commercial operation in 1993. When the Power Station becomes operational, the Venture will be an electric utility company within the meaning of section 2(a)(3) of the Act.

The State Government of Victoria has authorized SECV to sell a 40% ownership interest in the Power Station to a private investor and to contract for operation and maintenance of the Power Station. SECV and other governmental entities ("Government Investors") will own 60% of the Power Station. MEC has been placed on a short list of bidders for the 40% interest and the operating and maintenance contract.[2]

The structure under which MEC will hold its ownership interest in the Power Station if its bid is accepted has not yet been fully determined. MEC and the Government Investors will form Venture to own the Power Station. Each joint venturer in Venture will hold an undivided interest as tenant-in-common in the Power Station and the related power sales agreements.[3] MEC expects to hold its interest in Venture initially through a wholly owned Australia limited partnership (the "L") that will be wholly owned in turn by three or more to-be-formed, single purpose, wholly owned indirect foreign subsidiary companies of MEC.[4]

MEC will invest up to $300 million in the Power Station. Such investment will consist primarily of equity, but may include loans by SCEcorp. The application states that while no corporate guarantees relating to the acquisition have been made at any corporate level above MEC, SCEcorp will support the full equity commitment to the extent required by the lenders. Once long-term financing is obtained, the overall capital structure of the LP should consist of 20% to 30% equity and 70% to 80% debt.

MEMA will operate the Power Station pursuant to an operating and maintenance contract with Venture. It is anticipated that the costs and fees under such a contract will be in the range of $30 million to $31 million per year. It is also anticipated that another wholly owned subsidiary company of MEC, and possibly MEC as well, will provide management expertise to MEMA at cost, including a multiplier for overhead.

The application states that there will be no business transactions between Venture and Southern California Edison Company, SECcorp's sole United States public-utility subsidiary company. The application further states that apart from the services provided to MEMA, there will be no other contract with any other SECcorp affiliate.

The applicants anticipate that the total annual operating revenues of MEMA, and the total annual operating revenues received by MEC from its indirect interest in Venture, will not exceed an aggregate amount of $375.125 million (or 5% of SECcorp's 1991 total operating revenues of $7,502.498 million). The total assets of the Venture attributable to MEC will have a value not exceeding $841.41 million (or 5% of SCEcorp's 1991 total assets of $16,828.206 million).

As a result of the proposed transactions, all subsidiary companies of MEC described herein will be subsidiary companies of SCEcorp within the meaning of section 2(a)(8) of the Act. SECcorp and MEC request an unqualified order under section 3(b) of the Act exempting Venture and MEMA from all provisions of the Act. SCEcorp and MEC state that neither Venture nor MEMA will derive any material part of its income, directly or indirectly, from sources within the United States. Further, neither Venture nor MEMA will be, nor have any subsidiary company which is, a public-utility company operating in the United States. Applicants assert that rule 10(a)(1) will provide an exemption for Venture's and MEMA's parent entities insofar as they are holding companies. Further, the applicants assert that rule 11(b)(1), together with rule 10(a)(1), provides an exemption from the approval requirements of sections 9(a)(2) and 10 to which SCEcorp would otherwise be subject.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-7822 Filed 4-3-92; 8:45 am]

BILLING CODE 8010-01-M

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[1] See Nevada Sun-Peak Ltd. Partnership, SEC No-Action Letter (May 14, 1991) and Commonwealth Atl. Ltd. Partnership, SEC No-Action Letter (Oct. 30, 1991).

[2] Also placed on SECV's short list was Southern Electric International, Inc., a wholly-owned subsidiary of The Southern Company, a registered holding company. See File No. 70-7931.

Because the State of Victoria's goal is to diversify private ownership of the Power Station, MEC will commit to sell 5% of its ownership interest on the Australian Stock Exchange. Ultimately, MEC's retained ownership interest may be reduced to 25%.

[3] SECV will separately contract with each joint venturer in Venture to purchase on a long-term take-or-pay basis the available output from the Power Station under identical incentive-based power sales agreements ("PSAs"). The terms of the PSAs are being negotiated as part of MEC's bid for the purchase of the Power Station interest.

[4] The application states that there may also be an intermediate entity between the LP and Venture, if required by Australian law and tax efficiency considerations.

[Rel. No. IC-18637; 812-7764]

Putnam Adjustable Rate U.S. Government Fund, et al.; Notice of Application

March 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Putnam Adjustable Rate U.S. Government Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific California Tax Exempt Money Market Fund, Putnam Convertible Income-Growth Trust, Putnam Corporate Asset Trust, Putnam Daily Dividend Trust, Putnam Diversified Income Trust, Putnam Dividend Growth Fund, Putnam Energy-Resources Trust, Putnam Europe Growth Fund, Putnam Federal Income Trust, Putnam Florida Tax Exempt Income Fund, Putnam Focus Growth Fund, George Putnam Fund of Boston, Putnam Global Governmental Income Trust, Putnam Global Growth Fund, Putnam Gold and Precious Metals Fund, Putnam Health Sciences Trust,

Putnam High Income Government Trust, Putnam Yield Trust, Putnam High Yield Trust II, Putnam Income Fund, Putnam Information Sciences Trust, Putnam Investors Fund, Putnam Massachusetts Tax Exempt Income Fund II, Putnam Michigan Tax Exempt Income Fund, Putnam Michigan Tax Exempt Income Fund II, Putnam Minnesota Tax-Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund II, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam Ohio Tax Exempt Income Fund II, Putnam Option Income Trust II, Putnam OTC Emerging Growth Fund, Putnam Overseas Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, the Putnam Fund For Growth and Income Fund, Putnam Strategic Income Trust, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free High Income Fund, Putnam Tax-Free High Yield Fund, Putnam Tax-Free Insured Fund, Putnam Total Return Fund, Putnam U.S. Government Income Trust, Putnam Utilities Growth and Income Fund, Putnam Vector Growth Fund, Putnam Vista Fund, Putnam Voyager Fund, (the "Funds"), The Putnam Management Company, Inc. ("Putnam Management" or the "Manager") and Putnam Financial Services, Inc. ("PFS" or the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to (a) issue multiple classes of shares representing interests in the same portfolio of securities, and (b) assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares of the Funds and to waive the CDSC in certain cases.

FILING DATE: The application was filed on July 30, 1991 and amended on March 2, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 23, 1992, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Applicants, One Post Office Square, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or Elizabeth G. Osterman, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

A. The Variable Pricing System

1. Each of the Funds is an open-end management investment company registered under the Act. Each Fund has entered into an investment advisory agreement with the Manager pursuant to which the Manager provides investment advisory services to the Funds. Each Fund also has entered into a distribution agreement with the Distributor pursuant to which the Distributor acts as the principal underwriter for the Funds.

2. Most of the Funds currently are offered to investors at net asset value plus a front-end sales load. Many of such Funds have adopted distribution plans pursuant to rule 12b–1 under the Act ("Rule 12b–1 Plans"). The rule 12b–1 plans currently provide for payments to the Distributor at an annual rate of up to 0.35% of each Fund's net assets, although by action of the Trustees of such Funds, payments currently are limited to 0.25% of net assets. Six of the Funds are offered to investors at net asset value without an initial sales load, although those Funds impose a contingent deferred sales charge ("CDSC") on redemptions made within six years of purchase.[1] These Funds also have adopted Rule 12b–1 Plans, which provide for payments to the Distributor at an annual rate of up to 1.00% of each Fund's net assets. Finally, four of the Funds are money market funds and issue their shares at net asset value without the imposition of any sales charges. Three of these funds have adopted rule 12b–1 Plans which provide for payments to the Distributor at an annual rate of up to 0.35% of each Fund's net assets, although by action of the Trustees of those Funds, payments currently are limited to 0.20% of net assets.

3. Applicants request that any relief granted by the Commission pursuant to this application apply to the Funds and any other existing or future open-end investment company registered under the Act whose principal underwriter is PFS or an affiliate of PFS, and whose shares are divided into two or more classes with differing voting rights and expense allocations and that may employ a CDSC in a manner substantially similar to that described in this application.

4. Applicants propose to establish a multiple distribution arrangement (the "Variable Pricing System"). Under the Variable Pricing System, each Fund would have the opportunity to provide investors with the option of purchasing shares either (a) with a conventional front-end sales load and, in certain instances, subject to a distribution fee ("Class A shares" or the "Front-End Load Option"), or (b) subject to a CDSC and a higher distribution fee ("Class B shares" or the "Deferred Option"). In addition, under the Variable Pricing System, Applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the Class A shares and Class B shares as described below.

5. Under the Front-End Option, investors would purchase Class A shares at the then current net asset value plus a front-end sales load. The sales loads would be subject to reductions for larger purchases and under a right of accumulation or other discount purchase plans. The sales loads would be subject to certain other reductions permitted by section 22(d) of the Act and rule 22d–1 thereunder and set forth in the registration statement of each Fund. In addition, Class A shareholders of certain Funds would bear the cost of an ongoing distribution fee under a rule 12b–1 Plan based upon a percentage of the average daily net asset value of the Class A shares. The rate of such fee currently is not expected

[1] A CDSC is imposed upon redemption by these Funds in reliance upon a prior exemptive order. Investment Company Act Release Nos. 14569 (August 6, 1985) (notice), and 14703 (September 4, 1985) (order). Applicants are requesting relief to impose a CDSC pursuant to this application because, among other things, the method of calculating the CDSC as described in the application is different from the method described in the existing order.

to exceed 0.25% of each Fund's net assets.[2]

6. Under the Deferred Option, investors would purchase Class B shares at the net asset value per share without the imposition of a sales load at the time of purchase. The Funds also would pay a distribution fee, based upon the average daily net asset value of the Class B shares, which would compensate PFS for its services and expenses in distributing each Fund's shares, including payments made to brokers, dealers and certain financial institutions as commissions or service fees.[3] It is currently expected that such distribution fee would not exceed 1.00% of each Fund's net assets. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of his or her purchase may be subject to a CDSC, which is paid to the Distributor. It is currently expected that the percentage generally will vary from 5% for redemptions made during the first year from initial purchase to 1% for redemptions made during the sixth year from purchase. Other schedules with different initial percentages and different periods over which the CDSC is charged may also apply. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares also will be Class B shares, although such shares will not be subject to the CDSC.

7. From time to time the Funds may create additional classes of shares, the terms of which may differ from the Class A and Class B shares only in the following respects: (i) Any such class may bear different service and distribution fees (and any other costs relating to obtaining shareholder approval of the rule 12b–1 plan for such class, or an amendment of such plan), (ii) any such class may bear different shareholder servicing fees,[4] (iii) any such class may bear different designations, (iv) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class, and (v) any such class may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the Commission pursuant to an amended order. Shares of different classes also may be sold under different sales arrangements (including, for example, sales with a front-end sales charge, subject to a contingent deferred sales charge, or at net asset value) and may have different exchange privileges.

8. Under the Variable Pricing System, all expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that each class's net asset value and expenses will reflect the expenses associated with that class's rule 12b–1 plan (if any), including any costs associated with obtaining shareholder approval of such plan (or an amendment to such plan), any incremental shareholder servicing fees attributable to a particular class, and any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the Commission pursuant to an amended order. Expenses of a Fund allocated to a particular class of shares of that Fund will be borne on a *pro rata* basis by each outstanding share of that class. Because of the higher distribution fee, potentially higher shareholder servicing fee, and any other expenses that may be attributable to the Class B shares, the net income attributable to and the dividends payable on Class B shares would be lower than the net income attributable to and the dividends payable on Class A shares.

9. The Distributor will furnish the Trustees of each Fund with quarterly reports detailing amounts expended by the Distributor (for such quarter and on a cumulative basis) as distribution expenses ("Statements") to enable the Trustees to fulfill their responsibilities pursuant to paragraph (d) of rule 12b–1 and to make the findings required by paragraphs (e) of rule 12b–1.

10. Currently, shares of the Funds generally may be exchanged at net asset value for shares of other Funds. It is contemplated that Class B shares of a Fund will be exchangeable only for Class B shares of the other Funds, including Class B shares of money market funds. Class A shares of a Fund will be exchangeable only for Class A shares of the other Funds, including Class A shares of money market funds, and for shares of other Funds that do not participate in the Variable Pricing System. The exchange privileges will comply with rule 11a–3 under the Act.

B. The CDSC

1. Applicants also request an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and rule 22c–1 thereunder, to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of shares of the Funds and to waive the CDSC for certain types of redemptions. The amount of the CDSC charged will vary, depending on the length of time shares have been held.

2. The CDSC will not be imposed on redemptions of shares purchased more than a fixed number of years prior to the redemptions (the "CDSC Period") or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate.

3. The amount of any CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

4. The Funds would waive or reduce the CDSC on redemptions (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder and (b) in connection with certain distributions from an IRA, or other qualified retirement plan. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified. Also, in waiving or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act as if such CDSC were a sales load.

5. If the Trustees of a Fund that has been waiving or reducing its CDSC pursuant to either of the items set forth above determine not to waive or reduce such CDSC any longer, the disclosure in that Fund's prospectus will be appropriately revised. Also, any shares purchased prior to the termination of such waiver or reduction would have

[2] The Rule 12b–1 Plans for the Class A shares will permit an increase in payments to PFS to 0.35% of each Fund's average net assets without shareholder approval.

[3] As used in this application, the term "service fee" has the meaning given to that term in the recently proposed amendments to the rules of fair practice of the National Association of Securities Dealers, Inc. See NASD Notice to Members No. 90–56.

[4] As used in this application, the term "shareholder servicing fees" means fees paid to the Funds' shareholder servicing agent and others who perform transfer agency, account maintenance or dividend disbursing functions or who administer dividend reinvestment or systematic investment plans.

the CDSC waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

A. The Variable Pricing System

1. Applicants seek an exemption from section 18(g), 18(f)(1), and 18(i) to the extent that the Variable Pricing System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent that the allocation of voting rights under the Variable Pricing System may violate the provisions of section 18(i).

2. Applicants believe that the Variable Pricing System does not raise any of the concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds since all such shares will participate *pro rata* in all of a Fund's income and expenses with the exception of the differing distribution fees associated with the various rule 12b–1 plans, any incremental shareholder servicing costs payable by a particular class and any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the Commission pursuant to an amended order.

3. Applicants believe that the Variable Pricing System will both facilitate the distribution of shares by a Fund and provide investors with a broader choice as to the method of purchasing shares. in addition, Applicants believe owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater number of shares than they would be otherwise.

4. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described above is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and, in any event, the interests of the shareholders with respect to distribution fees would be adequately protected since the rule 12b–1 plans for each class will conform to the requirements of rule 12b–1, including the requirement that their implementation and continuance be approved on an annual basis by the Trustees of the Funds.

5. Since each class of shares will be redeemable at all times (subject to the same limitations set forth in each Fund's prospectus and statement of additional information), since no class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have any distribution or liquidation preference with respect to particular assets and no class will be protected by any reserve or other account), and since the similarities and dissimilarities of the classes of shares will be disclosed when required in the Funds' prospectuses and statements of additional information, investors will not be given misleading impressions as to the safety or risk of any class of shares and the nature of each class of shares will not be rendered speculative.

B. The CDSC

1. Applicants believe its request for exemptive relief is consistent with the standards of section 6(c) of the Act. The Applicants believe that the imposition of the CDSC is fair and in the best interest of their shareholders. The Variable Pricing System permits shareholders to have the advantage of greater investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase, as is the case with the Class A shares. Furthermore, the CDSC is fair to shareholders because it applies only to amounts representing purchase payments and does not apply to amounts representing increases in the value of an investor's account through capital appreciation, or to amounts representing reinvestment of distributions.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

A. Conditions Relating to the Variable Pricing System

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares of the same Fund will relate solely to: (a) The impact of different rule 12b–1 plan payments made by a particular class of shares (and any other costs relating to the implementation of such Plan) which will be borne solely by shareholders of such class, any incremental shareholder servicing costs attributable solely to a particular class, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to rule 12–1 plans, (c) different exchange privileges, and (d) the designation of each class of shares of a Fund.

2. The Trustees of each of the Funds, including a majority of the Independent Trustees, shall have approved the Variable Pricing System prior to the implementation of the Variable Pricing System by a particular Fund. The minutes of the meetings of the Trustees of each of the Funds regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Variable Pricing System will reflect in detail the reasons for determining that the proposed Variable Pricing System is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

5. The Trustees of the Funds will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only

distribution expenditures properly attributable to the sale of one class of shares will be used to support the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sales of a specific class of shares will not be presented to the Trustees to support rule 12b–1 fees charged to shareholders of such class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties under rule 12b–1.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that costs and distribution fees associated with any rule 12b–1 plan relating to a particular class will be borne exclusively by such class and except that any higher incremental shareholder servicing costs attributable solely to a particular class and any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the Commission pursuant to an amended order will be borne exclusively by such class.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among the various classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to the applicants (which has been provided to the staff of the Commission) stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. The Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Variable Pricing System will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present each class of shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

B. Condition Relating to the CDSC

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7824 Filed 4–3–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1595]

United States Organization for the International Telegraph & Telephone Consultative Committee (CCITT): Study Group a Meeting

The Department of State announces that the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group A will meet on April 21, 1992 at 9:30 a.m. in room 3519 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the meeting will include preparatory activities for the upcoming final meetings of CCITT Study Group III, in Geneva, scheduled for June 22–25 and Study Group II, (one-day) June 26, 1992; and a debrief of the March 24–April 2 meeting of Study Group I.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. 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: March 24, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee

[FR Doc. 92–7748 Filed 4–3–92; 8:45 am]

BILLING CODE 4710–07–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings; notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 8 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. April 23, 9 a.m. to 12:30 p.m., Columbus, OH, Region 3 Advisory Board.
2. April 28, 9 a.m. to 12:30 p.m., San Antonio, TX, Region 4 Advisory Board.
3. May 5, 9 a.m. to 12:30 p.m., Orlando, FL, Region 1 Advisory Board.
4. May 7, 9 a.m. to 12:30 p.m., Springfield, MO, Region 2 Advisory Board.
5. May 12, 9 a.m. to 12:30 p.m., Colorado Springs, CO, Region 5 Advisory Board.
6. May 21, 9 a.m. to 12:30 p.m., Newport Beach, CA, Region 6 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Columbus, OH—Rhodes State Office Tower, Lobby Hearing Room, 30 East Board.
2. San Antonio, TX—Hilton Palacio Del Rio, Corte Real Room, 200 South Alamo.
3. Orlando, FL—Omni Orlando Hotel, Ballroom A, 400 West Livingston Street.
4. Springfield, MO—Council Chambers, City Hall, 3d fl., 830 Boonville.
5. Colorado Springs, CO.—Centennial Hall, 200 South Cascade.
6. Newport Beach, CA—Sheraton Newport Beach, 4545 MacArthur Boulevard.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The regional advisory boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda

Topics to be addressed include economic impact of local real estate markets, RTC hard-to sell assets, RTC REOMS system and RTC's affordable housing programs. A detailed agenda will be available at the meeting.

Statements

Interested persons may submit to an advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: April 1, 1992.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 92–7782 Filed 4–3–92; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 20, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48053.
Date filed: March 17, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0495 dated February 4, 1992, Europe-South Asian Subcontinent R–1 To R–16. TC23 Reso/P 0496 dated February 4, 1992, Europe-South East Asia R–17 To R–28.
Proposed Effective Date: April 1, 1992.

Docket Number: 48054.
Date filed: March 17, 1992.
Parties: Members of the International Air Transport Association.
Subject: Telex dated March 10, 1992, Mail Vote 552 (Special Amending Reso 010c-Nepal).
Proposed Effective Date: April 1, 1992.

Docket Number: 48055.
Date filed: March 17, 1992.
Parties: Members of the International Air Transport Association.
Subject: Telex dated March 10, 1992, Mail Vote 553 (Special Cargo Amending Reso 010qq-Nepal).
Proposed Effective Date: April 1, 1992.

Docket Number: 48057.
Date filed: March 19, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 555 (Special Cargo Amending Reso 010rr-Tanzania).

Proposed Effective Date: April 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-7769 Filed 4-3-92; 8:45am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 20, 1992.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.101 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48056.

Date filed: March 18, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 15, 1992.

Description: Application of Kiwi International Air Lines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations requests authority to engage in interstate and overseas scheduled air transportation of persons, property, and mail: Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: 45723.

Date filed: March 19, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 16, 1992.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its foreign air carrier permit issued to it in Order 89-8-29, to the extent necessary to permit TAESA to engage in the scheduled air transportation of property and mail between (1) Mexico city (MEX-Benito Juarez)/Toluca (TLC-Morelos), and/or (2) Guadalajara (GDL), Mexico, on the one hand, and Los Angeles, CA (LAX), on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-7770 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD8-92-06]

Houston/Galveston Navigation Safety Advisory Committee

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 the twenty-ninth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 28, 1992, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Offshore and Inshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

• The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: March 23, 1992.

J. M. Loy,

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

[FR Doc. 92-7786 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-14-M

[CGD8-92-07]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

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 Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 7, 1992, at the Houston Yacht Club, 3620 Miramar, Shoreacres, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m.

The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard, District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: March 23, 1992.

J. M. Loy,

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

[FR Doc. 92.7787 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-14-M

[CGD8-92-08]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 7, 1992, at the Houston Yacht Club, 3620 Miramar, Shoreacres,

Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 Noon.

The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 23, 1992.

J.M. Loy,

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

[FR Doc. 92–7790 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–14–M

[CGD 92–023]

Oil Pollution Act of 1990—Mailing List for Interested Parties

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is announcing that it is maintaining mailing lists for those interested in Coast Guard actions taken to implement the provisions of the Oil Pollution Act of 1990 (OPA 90).

ADDRESSES: Individuals interested in being added to one of the mailing lists must write to: U.S. Coast Guard Headquarters (G–MS–2), 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Manager, Clearance and Coordination, OPA 90 Staff, (202) 267–6819.

SUPPLEMENTARY INFORMATION: On August 18, 1990, the President signed the Oil Pollution Act of 1990 (Pub. L. 101–380) (OPA 90). OPA 90 provides a comprehensive approach to the prevention and mitigation of oil spills and addresses financial liability and compensation following an oil spill. The Coast Guard has the responsibility to implement large portions of OPA 90 through developing and issuing regulations that will affect many diverse areas of the marine transportation industry.

In an effort to make the rulemaking process as responsive to the public as possible, the Coast Guard has established mailing lists of parties interested in receiving information about the Coast Guard's implementation efforts for OPA 90. There are two lists. The first list is for those who would like to receive copies of those Coast Guard rulemaking documents published in the **Federal Register** which implement OPA 90 mandates. Many interested parties who do not ordinarily see the **Federal Register** are on this list. The second list is for those wishing to receive a short newsletter put out each month by the OPA 90 Staff. There is no fee for receiving materials from either list. However, because producing and distributing the newsletter each month is expensive, the Coast Guard reserves the right to reconsider making it available without cost. Those wishing to receive mailings should notify the Coast Guard at the address listed in **ADDRESSES** above. The request should identify the list(s) to which the writer wants to be added.

Dated: March 31, 1992.

D.F. Sheehan,

Acting Chief, Office of Marine Safety, Security & Environmental Protection.

[FR Doc. 92–7784 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Transit Administration

Announcement of a Competition for Grants To Support a Suspended Light Rail System Technology Pilot Project; Solicitation of Systems and Sites

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) announces a competition for the Suspended Light Rail System Technology Pilot Program and solicits applications form eligible public entities interested in participating in the program. The purpose of this project shall be to assess the state of technology for a Suspended Light Rail System and to determine the feasibility and costs and benefits of using such a system for transporting passengers.

DATES: Proposals (6 copies) must be received on or before July 6, 1992.

ADDRESSES: Proposals shall be submitted to Steven A. Barsony, Director, Office of Engineering (TTS–20), Federal Transit Administration, 400 Seventh Street, SW., room 6431, Washington, DC 20590 and shall reference SLRSTPP/R&D.

FOR FURTHER INFORMATION CONTACT: Mary L. Anderson, Office of Engineering (TTS–20), at (202) 366–0222.

SUPPLEMENTARY INFORMATION:

Background and Objectives

On December 18, 1991, the President signed the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240), providing authorizations for highways, highway safety, and mass transportation for the next six years. The purpose of the Act is "to develop a national Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy and will move people and goods in an energy efficient manner."

Section 3030(c) of the Act establishes a Suspended Light Rail System Technology Pilot Project, the purpose of which is to assess the state of new technology for a suspended light rail system, and to determine the feasibility, costs, benefits, and environmental impacts of using such systems for transporting passengers.

Grants will initially be awarded to three public entities that must provide services for advancing the development of the Suspended Light Rail Transit System Technology Pilot Project. A total of not less than $1,000,000 will be awarded in FY 1992 to three entities to develop information on the feasibility and benefits of their proposed system and location for the pilot project. Grants shall be used by the selected entities to prepare for the final phase of the competition in accordance with procedures established below. The amount of each grant will not exceed 80% of the cost of such participation. No entity will receive more than one-third of these funds. If fewer than three complete applications from eligible public entities have been received in time to permit the awarding of grants, the deadlines for the submission of applications and the awarding of grants may be extended.

Based on the information submitted as a result of the initial phase efforts, the FTA will select one of these entities to proceed into the deployment phase of this project. FTA will provide not less than $4,000,000 in FY 1993 to the selected entity to conduct conceptual and preliminary engineering and environmental impact statement preparation. In addition, Section 3030(c)

provides for expedited procedures as follows: the FTA shall approve and publish in the **Federal Register** a notice announcing either (A) a funding of no significant impact, or (B) a draft environmental impact statement. If a draft environmental impact statement is published, the FTA shall approve and publish in the **Federal Register** a notice of completion of a Final Environmental Impact Statement.

The 1991 ISTEA specifically provides that this project is not subject to the Major Capital Investment Policy of the FTA. The selected public entity will make a determination on whether or not to proceed to actual construction of the project. If the determination to construct is made, the FTA shall enter into a full-funding grant agreement providing not less than $30,000,000 for construction in FY 1994, subject to the availability of funds from Congress. The Federal share of the cost of construction of the project will be 80% of the net cost of the project, and the full-finding grant agreement will address the full range of requirements applicable to the project under the Federal Transit Act as amended and other relevant Federal laws or regulations.

In addition, as specifically required by law, the full-funding grant agreement shall address the operating cost deficits for the project:

A. The system vendor for the project shall fund 100 percent of any deficit incurred in operating the project in the first two years of revenue operations;

B. The system vendor for the project shall fund 50 percent of any deficit incurred in operating the project in the third year of revenue operations; and

C. With respect to the third year of revenue operations, the Federal share of operating costs shall be paid by FTA from amounts provided for this project in a sum equal to 50 percent of any deficit incurred in operating the project in revenue operations or $300,000, whichever is less.

Project Description

Consistent with the ISTEA, this project shall:

A. Utilize new rail technology with individual vehicles on a prefabricated, elevated steel guideway;

B. Be stability seeking with a center of gravity for the detachable passenger vehicles located below the point of wheel-rail contact; and

C. Utilize vehicles which are driven by overhead bogies with high efficiency, low maintenance electric motors for each wheel, operating in a slightly sloped plane from vertical for both the wheels and the running rails, to further increase stability, acceleration, and braking performance.

Application Procedure

Each public entity shall submit one original and five copies of its proposal to: Steven A. Barsony, Director, Office of Engineering, Federal Transit Administration, 400 Seventh Street, SW., room 6431, Washington, DC 20590, Mail Code: TTS–20. Only complete proposals received on or before July 6, 1992, shall be considered. The proposals shall reference SLRSTPP/R&D.

Applications must meet the following requirements:

1. Eligibility Requirements

Consistent with the ISTEA, the applicant must:

a. Be a public entity of State or local government in consort with commercial enterprises, educational or research organizations, and/or Federal laboratories.

b. Have the capability to manage the planning, design, construction, and operation of a suspended light rail transit system.

c. Be in a cooperative agreement with a system vendor with demonstrated capabilities in the area of mass transit, in possession of the developed technology of suspended light rail transit as defined by the system "Requirements" as included in this Notice.

d. Be capable of providing the 20% funding for the studies as required by the Act (i.e., FTA provides grants of up to 80% of the cost of the initial study grants).

e. In the event a decision is made to construct the project, the public entity should identify a potential source(s) for the local share of the capital project.

f. Demonstrate that the candidate system is feasible and will fulfill a useful public transportation need.

2. System Requirements

To be considered in this competition, applicants should submit proposals that include an intial description of the Suspended Light Rail Transit Concept, conforming to the requirements in the ISTEA noted above under "Project Description", and also information on the following:

a. Speed—The cruising speed for a particular system is the result of tradeoffs of route alignment, power supply capacity, passenger throughput, along with other parameters. The system speed should be sufficient to allow total trip times equal to or better than those achieved by other transportation alternatives.

b. Ride Comfort—The system shall provide a ride vibration level that does not exceed the one-half hour reduced comfort and motion sickness criteria given in "Guide for Evaluation of Human Exposure to Whole Body Vibration" published by the International Organization for Standardization, ISO Standard 2631. ISO Standard 2630 can be obtained for a fee by writing to: Acoustical Society of America, Technical Committee 108, Mechanical Virbration & Shock, Standard Secretariat, 335 East 45th Street, New York, New York 10017–3483.

2.1 Human Factors:

Human factors considerations, including the operator, if any, passengers and maintenance considerations shall be evidenced in the design.

Passengers in the vehicles shall not experience:

(a) Roll rates in excess of 5 degrees/second.

(b) Sustained upward vertical inertial forces due to acceleration in excess of 0.25g (seated passengers).

(c) Sustained horizontal inertial forces due to acceleration in excess of 0.13g.

(d) Maximum emergency braking rates shall not exceed 0.35g (seated, unbelted passengers).

2.2 Other Factors:

(a) *Noise and vibration.* The noise and vibration produced by total system operation is designed to meet existing Federal standards and industry practices, as appropriate, for stationary facilities such as maintenance areas and stations. Noise and vibration produced by the vehicle traversing the guideway should be minimized. Potential noise and vibration impacts and possible mitigation methods in urban areas should be given special attention. "Noise Emission Standards for Transportation Equipment; Interstate Rail-Carriers" (40 CFR part 201) should be used for guidance.

(b) *Magnetic fields and EMI.* Human exposure to steady and fluctuating magnetic fields shall be minimized and consider current research findings.

(c) *Safety.* A system safety plan must be included which discusses possible failure modes, human operation considerations, evacuation procedures, system restart, equipment and software availability, safety inspections, consequences of vandalism and trespassing, etc. The central control facility will log all operations and communications for subsequent analysis in the event of a failure. Consideration must be given to safe use of materials

and construction methods, and to the safety of other users of the right-of-way.

(d) *Station operation.* Provision should be made for convenient and efficient inter- and intra-modal transfer and transport of passengers.

(e) *Availability and reliability.* The design should have high system availability and subsystem reliability, maintainability and ease of inspection.

(f) *Aesthetics.* Attention to aesthetics should be evidenced in the design to increase public acceptance.

2.3 Vehicle Requirements

(a) *Capacity.* Each light rail vehicle shall be configured to carry a passenger payload consistent with the route needs, and comply with the Americans with Disabilities Act.

(b) *Braking System.* Vehicles must have redundant braking systems which are fail-safe. No single point failure will cause a catastrophic accident.

(c) *Structural integrity.* Vehicles must safely withstand impacts with small objects such as birds, debris, snow and ice. Vehicles also must have adequate fatigue life and low-speed crashworthiness and shall sustain only minimum damage in a 2.2 m/s (5mph) impact.

(d) *On-board-power.* All power for normal hotel functions, should be transferred from the guideway. The vehicle must be equipped with emergency power for operation, as appropriate within the system safety plan.

(e) *Emergency systems.* Vehicles must include emergency systems for fire fighting, lighting, HVAC, evacuation, communication, etc. as appropriate within the system safety plan.

2.4 Guideway Requirements

(a) *Structural integrity.* Civil structure (foundation and structure supporting the guideway) shall have a minimum 50-year life. Consideration shall be given to structural integrity under earthquake and high-wind conditions.

(b) *Configuration.* Guideways will be prefabricated elevated steel structures. Single guideways must include provision for passing vehicles and future expansion. Dual guideways must include crossovers to sustain partial service during routine maintenance and repair of local failures. The central facility will control crossovers and bidirectional traffic.

(c) *Structure.* To facilitate maintenance, repair of failures, and eventual system upgrade, guideways should be of prefabricated construction with an independent support structure. This support structure (foundations, piers, beams, connectors) should be designed to accomodate growth in traffic (see System Capacity). The design also should include means for vertical and lateral adjustment of guiding elements to maintain stated tolerance.

(d) *Power Systems.* Power systems should be sized to provide vehicle acceleration and braking capacity for all operating conditions, and should be capable of meeting requirements for system capacity.

2.5 Route Information

(a) A description of the transportation need the system fulfills;

(b) A discussion of service concepts including headways, consist and travel time;

(c) Alignment and potential station locations;

(d) Potential capacity and ridership;

(e) A description of the route including vertical grades and horizontal curves.

3. Cost Information

(a) System capital costs.

(b) Operating/Maintenance cost.

(c) System Revenues/fare structure.

(d) A description of the public entity financing scheme and business plan;

4. Demonstration of Mangerial and Technical Capability and Previous Experience, Including:

(a) Technical experience of system vendor(s), contractor(s) and subcontractor(s), and

(b) Management experience of the public entity for:

(1) Demonstration projects, and

(2) Innovation in transit.

5. Proposal Preparation

Proposals should be no more than 100 pages. Glossy or elaborate proposals are not required or desired. Applicants may submit other supporting documents, or brochures with their proposals. However, all of the above required information must be contained within the proposal.

Proposal Review Process and Criteria

Initially, all proposals will be reviewed to confirm that the applicant is an eligible public entity and to ensure that the proposal contains all the information required by the proposal Contents sections of this notice.

Each complete proposal from an eligible public entity will then be evaluated by an Evaluation Panel. Proposals will be rated in accordance with the following criteria listed below:

(1) Technical merits of the proposed system;

(2) Public entity's demonstrated understanding and knowledge of the proposed project;

(3) Public entity's technical, managerial, and financial capacity to undertake construction, management and operation of the project;

(4) State, local and private sector entitites, contributions to the cost of the project including the donations of in-kind services and materials will be considered.

The Panel will forward the results of its evaluation to the FTA Administrator upon completion of its review. The final decision for funding of the project will be made by the FTA Administrator.

Issued On: March 31, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-7747 Filed 4-3-92; 8:45 am]

BILLING CODE 4910-57-M

National Highway Traffic Safety Administration

[Docket No. 92-13, No. 1]

Mitsubishi Motors American; Receipt of Petition for Determination of Inconsequential Noncompliance

Mitsubishi Motors America (Mitsubishi) of Southfield, MI has determined that some air brake hoses installed on heavy duty trucks imported by Mitsubishi Fuso Truck of America, Inc., fail to comply with 49 CFR 571.106, "Brake Hoses," and has filed an appropriate report pursuant to 49 CFR part 573. Mitsubishi has also petitioned 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 the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Mitsubishi determined that hoses manufactured by Meihi Rubber and Chemical Co., Ltd. (MRCC) were installed on 7,894 1986-1992 Model Mitsubishi trucks, and that some of these may fail the adhesion requirement of S7.3.7 of Federal Moter Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.7 requires that except for hose reinforced by wire, an air brake hose shall withstand a tensile force of eight pounds per inch of length before

separation of adjacent layers. Mitsubishi supports its petition with the following information:

1. Testing indicates that the noncompliance does not adversely affect vehicle safety. MRCC conducted FMVSS 106 tests on five different lots of hose which were manufactured by MRCC under the same manufacturing conditions as those which failed the adhesion requirement in the NHTSA test. The tests show full compliance with all requirements of FMVSS 106, with the exception of the adhesion test (S7.3.7).

2. In order to study whether separation of the adjacent layers may actually occur under regular vehicle operating conditions, MRCC imposed a pressure of 150 PSI, which is the maximum pressure actually applied to the hoses in MMC's trucks, for one hour and 24 hours. No signs of separation or ballooning were obseved. MRCC also imposed pressures of 300 PSI, double the maximum possible in the vehicle, for the same time periods. Again, no ballooning or separation was observed. Accordingly, in conditions which far exceed those that would actually be experienced in-use, there is no indication of an adverse impact on vehicle operation or safety from the noncompliance.

3. MRCC also conducted a flexure test specified in SAE J1402 on the hose assemblies which did not comply with the adhesion requirement at the second layer. SAE J1402 is the standard from which FMVSS 106 was derived. The SAE standard requires that an air brake hose assembly not lose air pressure before one million flexure cycles. MRCC hoses set this requirement. In addtion, hoses also passed the vacuum adhesion test requirements of SAE J1402 Para. 4.1.5.1.

4. It is Mitsubishi Motors America's position that the adhesion requirement is not, from a safety aspect, relevant to the operational characteristic of MMC brake hoses and that the other requirements of the standard better represent the hoses' in-service environment and performance.

The adhesion test is included in Standard No. 106 to ensure that the various layers of the brake hose do not separate in service. Low adhesion in brake hoses can result in the build-up of air between plies. The trapped air can cause inward ballooning of the hose resulting in slow reaction of the brakes served, or complete malfunction due to the hose conduit being blocked altogether. Mitsubishi felt that the aforementioned scenario is most likely to occur with brake hoses subjected to a vacuum condition and the brake system of MMC heavy duty trucks are never subjected to a vacuum condition. MMC vehicles exported to the U.S. operate brake systems only at pressure conditions higher than atmosphere pressure.

Mitsubishi also believes that low adhesion causing separation of the hoses will not occur in the pressure application of this hose because the end fittings are composed of a sleeve crimping the hose from the outside of the hose, and a nipple or a joint inserted into the inner tube. The sleeve, nipple, and joint are independent of each other. Accordingly, any air which did pass between the inner tube and the nipple or the joint would immediately be discharged into the atmosphere through the gap between the sleeve and the nipple or the joint. In addition, both the intermediate rubber and the outer rubber have pin pricked holes specifically designed to allow trapped air to excape into the atmosphere. Therefore, air could not remain trapped in the plies.

Interested persons are invited to submit written data, views and arguments on the petition of Mitsubishi, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicate below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 6, 1992.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 31, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–7726 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 31, 1992.

The Department of the Treasury is rescinding the **Federal Register** notice published on March 30, 1992 [FR Doc. 92–7171 Filed 3–27–92; 8:45 am; page 10786] for the information collection below. The notice was submitted in error under the assumption that the associated forms were being revised and not the rule.

Comptroller of the Currency

OMB Number: 1557–0106.

Title: (MA)–Securities Exchange Act Disclosure Rules.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–7798 Filed 4–3–92; 8:45 am]

BILLING CODE 4810–33–M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on April 22–23, 1992. The meeting will be held in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, April 22, 1992 and 8:30 a.m. on Thursday, April 23, 1992. The agenda will include the following topics:

Wednesday, April 22, 1992

Tax Systems Modernization: Privacy/Security Update, Future of Collection Programs, Report of IRS' Ethics Training, Status of Circular 230, Status of Automated Extension System (APEX), Plan for Human Resources Issues, Joint Quality Process, Recommendations for Quality & Cycle Time Measurements, Status of Regulations Reduction Mandate, 1992 Filing Season.

Thursday, April 23, 1992

Subgroup Action Plans for 1992, Diversity Issues, Future of Compliance 2000, Status of Compliance Issues.

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Patti Andrews, Senior Program Analyst, no later than April 15, 1992. Ms. Andrews can be reached on (202) 566–3161 (not toll–free).

If you would like to have the committee consider a written statement, please call or write Ms. Andrews, Executive Secretariat, C:ES, room 3308, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMAITON CONTACT: Patti Andrews, Senior Program Analyst, (202) 566–3161 (not toll–free).

Shirley D. Peterson,

Commissioner.

[FR Doc. 92–7759 Filed 4–3–92; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice for the Federal Register.

The United States Advisory Commission on Public Diplomacy will meet in room 600, 301 4th Street, SW., on April 8 from 9 a.m. to 11:45 a.m.

The meeting will be closed to the public from 10 a.m.–11 a.m. because it will involve discussion of classified information relating to USIA's Television Marti broadcasting operations and the Voice of America's Middle East broadcasting facilities. (5 U.S.C. 552b(c)(1))

From 9:15 a.m. to 10 a.m. the Commission will meet in open session with Mr. Will Jones, Chief, Exhibits Division, USIA, for a briefing on the Seville Expo. From 11:15 to 12 noon, the Commission will meet with Mr. Ron Hinckley, Director, Office of Research, for a discussion of USIA's public opinion and media research activities.

Please call Gloria Kalamets, (202) 619–4468 for further information.

Dated: March 30, 1992.

Henry E. Catto,

Director.

[FR Doc. 92–7779 Filed 4–3–92; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 66
Monday, April 6, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 14, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–7990 Filed 4–2–92; 3:26 pm]

BILLING CODE 6351-01-M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 10788.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: April 1, 1992—10:00 a.m.

CHANGE IN THE MEETING: The time of the meeting has been changed to 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92–7884 Filed 4–2–92; 10:31 am]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 10788, March 30, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 10:30 a.m., Thursday, April 2, 1992, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Consideration of office space options for the Federal Reserve Board. (This item was originally announced for a closed meeting on March 30, 1992.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–7975 Filed 4–2–92; 2:08 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 57, No. 66
Monday, April 6, 1992

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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-039]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

Correction

In notice document 92-6660 beginning on page 10004 in the issue of Monday, March 21, 1992, make the following corrections:

1. On page 10005, in the 4th column of the table, in the 11th entry, in the second line, "form" should read "from".

2. On page 10006, in the first column of the table, in the sixth entry, in the third line, "97–" should read "91–".

3. On the same page, in the third column of the table, in the ninth entry, "02––92" should read "02–12–92".

4. On the same page, in the 5th column of the table, in the 10th and 11th entries, in the first line of each entry, "Aroostook" was misspelled.

5. On the same page, in the file line at the end of the document, "92–6600" should read "92–6660".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Agency Committees; Meetings

Correction

In notice document 92-6310 beginning on page 9557 in the issue of Thursday March 19, 1992, make the following correction:

On page 9558, in the first column, in the last paragraph, in the first line, after "committee" insert "meeting".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1001

[Ex Parte No. MC-204]

Historical Retention of International Joint Ocean-Motor Through-Rate Tariffs

Correction

In proposed rule document 92-5923 appearing on page 8858 in the issue of Friday, March 13, 1992, make the following corrections:

1. In the third column, in paragraph 1., in the second line, following the colon, remove "Q04".

§ 1001.1 [Corrected]

2. In the same column, in § 1001.1(a), in the second line, "*§ 101.3*)" should read "*§ 1001.3*)".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

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

Correction

In rule document 92-3591 beginning on page 5382 in the issue of Friday, February 14, 1992, make the following corrections:

On page 5383, in the table, ".06" should appear under "i_{15}" and ".05875" should appear under "i_u".

BILLING CODE 1505-01-D

federal register

Monday
April 6, 1992

Part II

Department of Transportation

Federal Highway Administration

Research and Special Programs Administration

Chemical Waste Transportation Institute; Application for Preemption Determination Concerning a Hazardous Waste Transportation Ordinance of the City of Chester, WV

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Research and Special Programs Administration

[Docket No. PDA-3]

Chemical Waste Transportation Institute; Application for Preemption Determination Concerning a Hazardous Waste Transportation Ordinance of the City of Chester, WV

AGENCY: Federal Highway Administration (FHWA) and the Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The Chemical Waste Transportation Institute has applied for an administrative determination whether a City of Chester, West Virginia ordinance concerning the transportation of hazardous waste is preempted by the Hazardous Materials Transportation Act (HMTA).

DATES: Comments received on or before May 13, 1992, and rebuttal comments received on or before July 1, 1992, will be considered before administrative rulings are issued by the Associate Administrator for Safety and System Applications, Federal Highway Administration and the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: (202) 366–5046. Fax number: (202) 366–3753. A copy of the application and each comment may be reviewed in the Dockets Unit, Federal Highway Administration, room 4232, HCC–10, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments and rebuttal comments on the application may be submitted to the Dockets Units at the above address, and should include the Docket Number (PDA–3). Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. Kevin Connors, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Ave., NW., suite 1000, Washington, DC 20036 and to Edwin J. Adams, Esq., City Attorney, City Hall, 375 Carolina Avenue, Chester, WV 26034. A certification that a copy has been sent to each person must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Connors and Adams at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel (DCC–10), Research and Special Programs Administration, 202–366–4400; Jerry W. Emerson, Traffic Control Division (HHS–32), Office of Highway Safety, 202–366–2218; or Raymond Cuprill or Eric Kuwana, Office of Chief Counsel, Federal Highway Administration, 202–366–0834, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

1. Background

The preemption provisions of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, were amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101–615. The Research and Special Programs Administration's (RSPA's) regulations have been revised to reflect these changes. 56 FR 8616 (Feb. 28, 1991); 56 FR 15510 (Apr. 17, 1991).

With two exceptions (discussed below), Section 105(a)(4) of the HMTA (49 App. U.S.C. 1811(a)(4)), preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as any provision of the HMTA or any regulation under that provision concerning that subject. The "covered subjects" are defined in Section 105(a)(4) as:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

RSPA has issued a **NOTICE OF PROPOSED RULEMAKING** proposing a specific definition for the term "substantively the same." 56 FR 36992 (Aug. 1, 1991).

In addition, Section 105(b)(4) of the HMTA, 49 App. U.S.C. § 1804(b)(4), addresses the preemption standard applicable to hazardous materials routing designations. Effective two years after the issuance of regulations by the Secretary of Transportation establishing Federal standards applicable to hazardous materials routing designations, any highway routing designation not made in accordance with such Federal routing standards would be preempted by the HMTA. The statute describes the standards and factors that are to be incorporated in the regulations.

The Secretary of Transportation has delegated responsibility for all issues related to the highway routing of hazardous materials to the FHWA. 56 FR 31343 (July 10, 1991). The FHWA will issue regulations implementing the HMTUSA amendments that relate to hazardous materials highway routing, including the promulgation of Federal routing standards and procedures governing the issuance of related preemption determinations and waivers of preemption. For purposes of this notice, any preemption determination made by the FHWA will be issued pursuant to the authority granted by the HMTA and in accordance with existing regulations (49 CFR 107.203 et seq.), except that the determination will be issued by FHWA's Associate Administrator for Safety and System Applications.

Finally, section 112(a) of the HMTA, 49 app. U.S.C. 1811(a), provides that, with two exceptions discussed below, State, political subdivision and Indian tribe requirements not covered by Sections 105(a) or 105(b) provisions are preempted if—

(1) compliance with both the State or political subdivision or Indian Tribe requirement and any requirement of (the HMTA) or of a regulation issued under (the HMTA) is not possible, (or)

(2) the State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of (the HMTA) or the regulations issued under (the HMTA) * * *.

As indicated in the preamble to the final regulation implementing the HMTUSA preemption provisions, 56 FR

at 8617 (Feb. 28, 1991), section 112 codifies the "dual compliance" and "obstacle" standards which RSPA previously had adopted by regulation and used in issuing its advisory inconsistency rulings.

The two exceptions to preemption referred to above are for: (1) State, local or Indian tribe requirements "otherwise authorized by Federal law" and (2) State, local or Indian tribe requirements for which preemption has been waived by the Secretary of Transportation.

All of the above-described preemption standards are incorporated in 49 CFR 107.202.

Section 112(c) of the HMTA provides for issuance of binding preemption determinations to replace the advisory inconsistency rulings previously issued by RSPA. Any directly affected person may apply for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on that issue for 180 days after filing the application or until the preemption determination is issued, whichever occurs first. A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final.

The Secretary of Transportation has delegated authority to issue preemption determinations concerning highway routing issues to the FHWA and those concerning all other hazardous materials transportation issues to RSPA. 56 FR 31343 (July 10, 1991). RSPA's Associate Administrator for Hazardous Materials Safety will issue RSPA's determinations, and FHWA's Associate Administrator for Safety and System Applications will issue FHWA's determinations. Regulations concerning preemption determinations were issued on February 28, 1991 (56 FR 8616), and are at 49 CFR 107.203–211 and 107.227.

Because CWTI's application concerns highway routing issues and non-highway routing issues, DOT will issue one or more preemption determinations. FHWA will address highway routing issues, and RSPA will issue non-highway routing issues. Final decisions on these issues may not be forthcoming until rulemaking to implement HMTUSA is completed.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 89–1288 (10th Cir. Dec. 18, 1991), reversing No. 88–Z–1524 (D. Colo. 1989).

In issuing preemption determinations under the HMTA, RSPA and FHWA are guided by the principles enunciated in Executive Order No. 12,612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, as discussed herein, contains several express preemption provisions. The preemption standards have been incorporated in the regulations at 49 CFR 107.202.

2. The Application for a Preemption Determination

On December 19, 1991, the Chemical Waste Transportation Institute submitted the following application for a preemption determination:

Before the United States Department of Transportation, Office of Hazardous Materials Safety

Petition for a Determination of Preemption Concerning the City of Chester, West Virginia Ordinance No. 305, Transportation of Hazardous Waste

Petitioner: National Solid Wastes Management Association on Behalf of the Chemical Waste Transportation Institute

December 19, 1991.

Introduction

The National Solid Wastes Management Association (NSWMA) is a trade association representing more than 2,000 private waste service firms in the United States and Canada. NSWMA also has a corresponding relationship with members in over a dozen countries around the globe. The membership of the Association includes firms and individuals engaged in every aspect of solid and hazardous waste management, waste reduction, transportation, recycling and reuse. The Chemical Waste Transportation Institute (CWTI) is a part of the NSWMA consisting of commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. CWTI's members are both private and for hire carriers that operate in interstate and intrastate commerce, including points to, from and through Chester, West Virginia.

In response to the possibility of increased transportation of hazardous waste through the City of Chester, West Virginia (City) enroute to a soon to be operational hazardous waste incinerator in East Liverpool, Ohio, the City Council enacted Ordinance 305 regarding the transportation of hazardous waste (Ordinance).[1] (Copy enclosed.) While the opening of the incinerator most likely will increase hazardous waste transportation through the City, local generators of hazardous waste have been transporting such waste from the City for years. Nevertheless, no incident involving the release of hazardous waste has ever been reported in Chester.[2] In the absence of any known incidents, the City will have great difficulty showing how the requirements contained in its Ordinance will enhance safety; in fact, we believe the opposite result will likely occur.

At the same time, the City failed to consider the ramifications that might befall surrounding jurisdictions if carriers of hazardous waste chose to bypass the City rather than adhere to its requirements.[3] Neither was the City moved to reconsider its policy in light of clear Congressional intent that uniform national standards govern the transport of hazardous materials, including waste. The preemptive powers granted the Department of Transportation (DOT) pursuant to sections 105 and 112 of the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (1990 Amendments), are intended "to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation."[4] While it is true that

[1] The existence of the East Liverpool facility was cited as the reason for the Ordinance by Edwin J. Adams, City Attorney, in a telephone conversation with Cynthia Hilton, NSWMA, on November 25, 1991.

[2] See data of the Information Systems Branch, Office of Hazardous Materials Safety, US Department of Transportation (1977–1990).

[3] Despite the Secretary's July 10, 1991 delegation of authority which defers matters involving the selection of routes, including limitations and restrictions, to the FHWA, nowhere in the Ordinance does the word "route" appear. We submit that unless and until FHWA finalizes its routing criteria pursuant to section 105(b) of the HMTA, as amended, the matters in this petition are appropriate for consideration by OHMS even if one or more of them result in motor carriers voluntarily "routing" around the city.

[4] S. Rept. No. 1192, 93rd Cong., 2d Sess. 37 (1974).

the HMTA does not "totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the [Hazardous Materials Regulations (HMR)], issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity." [5]

Applying these principles to the numerous requirements in the City Ordinance set forth below, we submit that the following requirements of the Ordinance must be preempted.

• Definition of Covered Materials

Section 1 defines the term "hazardous waste" to mean "*any waste* or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because such waste or combination of wastes are non-degradable or persistent in nature or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects, *and any substance* that is defined as a hazardous waste by the federal government or by the laws of this state." (Emphasis added.) The use of the conjunction "and" and the distinction between "any waste" and "any substance" suggests that the City intends a definition of hazardous waste far broader than that listed and regulated by the federal government. In fact, the Ordinance, as it applies to every "hauler" of "City-defined hazardous waste" regardless of quantity, could mean that an auto owner transporting waste oil to a collection site would need a $20 million bond to travel at night as well as a police escort, and would forfeit he/r car if the taillight was burned out.

Congress felt so strongly about the federal prerogative to regulate hazardous materials in certain areas, including the designation of hazardous materials, that a new standard of preemption was crafted in the 1990 Amendments.[6] The standard preempts any political subdivision requirement in the listed subject areas that is not "substantively the same as" the federal standard or regulation. Section 1 fails to meet the "substantively the same as" test with regard to the designation of hazardous materials.

• Pre-notification

Section 2 provides that each transporter of hazardous waste must notify the chief of police 24 hours in advance of entering the City's limits. On numerous occasions, DOT has found that advance notice requirements of hazardous materials transportation are inconsistent with the HMTA and the HMRs.[7] Local requirements have the potential to delay and redirect traffic. In fact, section 2 goes on to mandate that transporters proceed to a "staging area." Even if no further activities transpire at the "staging area," the subject vehicle would be detoured from the direct route of travel. "Delay in such (hazardous materials) transportation is incongruous with safe transportation." [8] DOT has also ruled that "the mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possible permanent, change in traffic patterns." [9]

• Vehicle Inspection

Section 3(A) requires all vehicles transporting hazardous waste to be inspected for leaks and defects each and every time the vehicle transits the City.

While what constitutes "defects" is not spelled out in the Ordinance, we assume "defects" refers to the physical condition of the vehicle. Even so, the authority to search for unnamed "defects" could provide the City with unfettered discretion in areas exclusively reversed to the Federal Government.[10] 49 CFR part 396 provides for periodic vehicle inspections and, pursuant to section 210 of the Motor Carrier Act of 1984, vehicles which pass the inspection provided for in 49 CFR part 396 must be recognized as valid in all other jurisdictions for one year from the date of the inspection. While 49 CFR part 396 is technically a part of the Federal Motor Carrier Safety Regulations (FMCSRs) and not the HMRs, the HMRs do reference and compel compliance with the FMCSRs.[11] Moreover, OHMS has recently proposed to assert direct authority over the FMCSRs when hazardous materials transportation is involved.[12] Other federal regulations cover procedures to insure that package failures do not occur and procedures to follow in the event of a release.[13] The City has not shown how the federal requirements have been deficient. Indeed, as noted above, no incidents involving hazardous waste have ever been reported to the Department. Since the City has not established unique conditions that may exist in Chester, we must assume that a finding of consistency for this requirement would invite similar actions by any or all of the 30,000 political jurisdictions in the United States. Such a result would be at odds with a primary goal of the HMTA, as amended, namely, to "preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." Consequently, section 3(A) of the Ordinance should be preempted under the "obstacle" test.

• Bonding

The Ordinance prescribes several conditions when bonds must be posted. In section 3(A), a transporter of hazardous waste must post a $10 million cash bond, or a bond in like amount guaranteed by a corporate surety if during the vehicle inspection a leak or defect is discovered. In section 3(C), transporters traveling on City roads from sundown to dawn must post a $20 million cash bond, or a bond in like amount guaranteed by a corporate surety.

The City does not give credit to transporters of hazardous waste for the financial responsibility requirements imposed pursuant to 49 CFR 387.7 and 387.9. In recognition of these requirements, DOT has earlier found that the absence of a bonding, insurance, or indemnity requirement in the HMR is a "a reflection of (DOT's) determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMRs."[14] Moreover, the clearly excessive bond requirements, almost confiscatory, expose the Ordinance for what it truly is—a bald attempt to stop transportation of hazardous wastes through the City unrelated to any legitimate local, public health or safety needs.

• Police Escort

Section 3(B) forbids transporters to travel in the City without a police escort.

DOT has found that requirements for carriers to delay for escorts involving radioactive materials (RAM) transportation is inconsistent.[15] If DOT

[5] See 55 FR 36, 737 (Sept. 6, 1990).

[6] See P.L. 101-615 section 105(a)(4)(B) (i) and (a)(4)(A).

[7] See Inconsistency Rulings (IR)-6; IR-8(A); IR-16; IR-28; IR-30; and IR-32.

[8] See IR-2, 44 FR 75566, 75571.

[9] See IR-3, 46 FR 18919, 19821.

[10] See IR-22, 52 FR 46582 (December 8, 1987).

[11] See 49 CFR 177.804.

[12] See HM-166X, 56 FR 37505 (August 7, 1991).

[13] See 49 CFR 173.24; 49 CFR 171.15 & .16; 49 CFR 177.854; 49 CFR 172 subpart G; 40 CFR 302.6; and 40 CFR 355.40.

[14] See IR-25, 54 FR 16308, 16311.

[15] See IR-15.

can find state and/or local requirements for escorts inconsistent and preempted for RAM shipments, surely the Department will find preemption for such escort requirements and the delay they impose for other types of less hazardous materials, including wastes which are usually the spent byproduct of pure materials.

• Time-of-Day, Condition-of-Weather Restrictions

Section 3(C) provides that transporters may travel only during times dictated by the chief of police, but in no case may travel be authorized during periods of air inversion or during periods of inclement weather or within 48-hours of when these weather conditions have occurred or are forecast to occur. Nor may transporters travel through the City during the period commencing one hour before and ending one hour after any elementary or secondary school within the City is in session. Also, any travel between sunset and surise is subject to "extra safety precautions." While inclement weather is defined as "rain, sleet, snow, freezing conditions, and winds of forty miles per hour or more, including gusts," there is no explanation of what "extra safety precautions" might entail.

The City can claim no unique status with regard to weather conditions. If any of the conditions suggested by the City were upheld by the Department then federal regulations should be adjusted so that all United States citizens may benefit from the enhanced safety conditions, not just those resident in the City. In fact, the predictable delays at the City limits—in some cases stretching into days—and/or redirection of commerical hazardous materials traffic into other jurisdications that will result from the imposition of these weather condition restrictions impose unacceptable safety risks on those non-City jurisdictions. The City has made no assessment of where diverted or delayed hazardous waste traffic would go, nor has it considered the burdens on commerce because of these delays. For these reasons, DOT has already found such requirements inconsistent and preempted.[16] The City can always petition for a change in the rules pursuant to 49 CFR 106.31 and/or 49 CFR 389.31 if it wants to pursue this matter.

Again, the City's assertion of unfettered authority to determine at will what "extra safety precautions" might be imposed with no opportunity for public review and comment should be preempted. Clearly, the burden is on the City to disclose what "extra safety precautions" it has in mind and to demonstrate how safety is, if at all, improved.

• Following Distances

Section 3(F), among other things, prohibits a motor carrier's vehicle from following within 150 feet of any vehicle other than the police escort vehicles." In the first place, we submit that, for the most part, the requirement for following distances is unnecessary inasmuch as section 3(B) provides that "hauler(s) may *only* travel with a police escort* * *" (Emphasis added.)

However, the City's Ordinance may require vehicles to observe a 150 foot following distance to the extent that vehicles travel to the City's "designated staging area" (DSA) where the vehicle inspection will take place and the police escort assigned. Since the Ordinance does not specify where the DSA will be—at a place outside City limits, at the corporate limits, or inside the City—we cannot know to what extent the 150 foot following distance may apply. We are aware that in the matter of Montevallo, Al (IR–32) DOT found requirements for following distances consistent.[17] However, if following distance provision is applicable, we believe that safety is not served and that the requirement fails the "obstacle" test and should be rejected for the reasons articulated in the NSWMA/CWTI partial appeal of IR–32. (Copy attached.) Furthermore, we would suggest that the burden to show how a 150 foot following distance enhances safety rests with the City. Absent such a showing by the City, the requirement clearly is a burden on commerce and should be preempted.

Finally, if DOT reaches the same conclusion we did that the City's definition of hazardous waste is preempted because it is not substantively the same as the federal standard then "(a) requirement for compliance with an inconsistent provision is itself inconsistent." [18]

• Speed Limits

Section 3(F) provides that vehicles may not travel at speeds in excess of 10 miles below the posted speed limit. DOT has issued opinions in the past that local traffic controls, including speed limits, are presumed valid.[19] On its face, it seems that no issue exists. However, we submit that inasmuch as the City has singled out hazardous waste from all other hazardous materials for this requirement, that it has less to do with safety and more to do with obstacles to the transportation of hazardous materials which happen to be wastes—shipments that are presumptively safe based on their compliance with federal regulations.

• Weight Limits

Section 3(G) provides that no transporter's vehicle may be authorized to travel within the City "if the vehicle weighs within 10,000 pounds of *any* posted weight limitation, including weight imitations for bridges, tunnels, and roads." (Emphasis added.) We submit that a vehicle need not be subject to a weight limitation if the vehicle is not going to travel on that section of road, or through that tunnel, or over that bridge. More so than speed limits, this requirement must simply be exposed as an authorized restraint on the transportation of hazardous materials. Since no travel is authorized without escort, it is unlikely that a vehicle, with escort, would travel over weight-limited bridges, tunnels and roads in the City. Vehicles should only be required to satisfy the weight requirements that exist on the route taken into, through, or out of the City.

Moreover, the effect of the weigh limit might also artifically reduce the quantity of cargo that may be carried in the vehicle while it is within City limits. No justification is given for this limitation other than to generically assert that the requirements of the Ordinance as a whole are "intended to protect the health and safety of the (City's) citizens from unnecessary dangers posed by the transportation of hazardous waste* * *"

However, the action of the City might in fact increase hazardous waste truck traffic in the City because it will take more trucks to carry the same load. On the other hand, if a transporter were to undertake "break and bulk" activities [20], as a response to the City's weight restriction, the City has not considered the larger potential of release and damage that results from loading and unloading operations associated with break and bulk activities as cargos enter or leave the City. Incidents most frequently occur during loading and unloading

[16] See IR–32, 55 FR 36744 (September 6, 1990). Only on a case-by-case basis may weather conditions be a factor to divert or halt hazardous materials shipments in transportation.

[17] The NSWMA/CWTI is appealing DOT's funding that following distance requirements are consistent.

[18] See IR–5(A), 52 FR 13000, 13006.

[19] See IR–20; and IR–23; and IR–32.

[20] "Break and bulk" activities refer to steps involving the off-loading of cargo and steps to consolidate cargo.

operations.[21] To the extent that hazardous wastes are packed and repacked during bulk and break activities, not for the purpose of increasing transportation efficiencies, but merely to comply with the City's Ordinance, the requirement is preempted pursuant to section 105(a)(4)(A) of the HMTA, as amended.

• Fees

Aside from the steep costs associated with the bonding requirements, the Ordinance also provides that transporters must pay, in advance, for the costs of the vehicle inspection and the police escort. The fees are to be determined and set by the chief of police.

The Ordinance provides no advance notice and opportunity for public comment on the fee schedules; nor, apparently, are the fee schedules subject to approval by the City Council. Worse, the Ordinance contains no guidance suggesting that the amount of the fees should be limited to the actual costs of performing the vehicle inspection or providing the police escort. One can assume, therefore, that the chief of police is free to arbitrarily set and change fees at will.[22] Furthermore, the fees only apply to the shipment of hazardous waste, as opposed to all hazardous materials in the same hazard classes. Section 112(b) of the HMTA, as amended, provides that fees collected in connection with the transportation of hazardous materials must be "equitable." The dictionary defines "equitable" to mean "dealing fairly and equally and with all concerned." We submit that the standard-less grant of authority to the chief of police to set fee schedules which apply only to select hazardous materials simply because they are wastes cannot be "equatable" because materials posing similar risks in transportation are treated differently and no measures exist to insure that the fee schedules are in fact applied fairly and equally. The provisions of the Ordinance respecting the levying of fees should be preempted pursuant to Section 112(b).

• Penalties

Section 4 provides for penalties. Of particular concern is the penalty that provides for vehicle forfeiture to the City if any vehicle used to transport any hazardous waste enters in violation of the Ordinance.

While DOT may not have a duty to concern itself with the fact that there are no due process procedures spelled out in the Ordinance, DOT is concerned with compliance because safety is enhanced as compliance rises. An underlying premise of the HMTA, as amended, is to foster compliance. Congress realized that compliance is not advanced when state and local requirements "vary from Federal laws and regulations * * * thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting * * * requirements." [23] Yet, the City gives no indication of how transporters will be notified of the requirements so that a transporter might comply.

If the City actually implements its vehicle forfeiture requirements, we would respectfully request that its compliance as a transporter of hazardous waste be affirmed. We do not believe that the City has considered its liabilities and the environmental risks that it assumes by confiscating vehicles carrying hazardous waste. We question whether the City has registered with the US Environmental Protection Agency (EPA) and otherwise complies with the requirements of 40 CFR part 263. Likewise, we question whether the City has insurance or other means to cover liability similar to that required by 49 CFR 387, as well as whether the City has the necessary state permits to transport the hazardous waste carried in the confiscated vehicles. There are no permitted TSDFs in West Virginia, so the City will have to engage in interstate transportation to move the hazardous waste to an approved treatment or disposal site. Each of the states surrounding West Virginia require carriers of hazardous waste to obtain a separate and distinct permit. If the City does not intend to transport the waste in the confiscated vehicle, then it creates for itself a loading/unloading scenario with its attendant risks. If the waste in the confiscated vehicles is held more than ten days while the City arranges alternate transportation, the City must apply to the US Environmental Protection Agency for a storage permit. We question whether the rights of the generator of the hazardous waste have been adequately protected. The generator carries "cradle to grave" responsibility for he/r waste. The generator should be consulted as to the disposition of the waste if the City confiscates the vehicle. In short, the City may seriously impair safety if no plans exist to manage the cargos of the vehicles which are confiscated.

Conclusion

At some time in the past, DOT has already found each of the requirements of the Ordinance preempted with the exception of requirements to mark vehicles according to DOT requirements,[24] to produce a copy of the Uniform Manifest shipping document when requested, and requirements related to vehicle traffic control. We have no quarrel with the provisions to mark vehicles according to DOT requirements and to produce a copy of shipping papers when requested by City officials. We see these requirements as a reaffirmation of federal standards. After careful review of the facts of the situation, we believe DOT will find as we do that the provisions dealing with traffic controls have more to do with restricting transportation of hazardous waste than with improvement in safety.

In all other matters, we see no reason for the Department to retreat from its previously held positions, particularly in light of Congress's reaffirmation of DOT's primacy in the regulation of hazardous materials transportation and the strengthening of DOT's authority to deal with questions of preemption. Again, we do not see how the Ordinance promotes uniformity with Federal laws and regulations, how it assists shippers and carriers to comply, or how safety is enhanced in a reasonable, adequate and cost-effective way.

Finally, the City has failed to justify its singling out of hazardous waste, which is found in all DOT hazard classes, from all other hazardous materials. If shipments of waste Class 3 materials should be subject to these requirements, then all Class 3 materials should be subject. DOT has recognized

[21] Transportation of Hazardous Materials, Office of Technology Assessment, 1986, p. 25.

[22] This standard-less provision is fraught with abuse. Courts have applied the void for vagueness doctrine to invalidate statutes, administrative regulations and municipal ordinances which utilize over-broad or unclear standards. The US Supreme Court has long held that "(a) statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application violates the first essential of due process of law." *Conally* v. *General Construction Col*, 269 U.S. 385, 391 (1926). See also, *Geo-Tech Reclamation Industries, Inc.* v. *West Virginia Depart. of Natural Resources*, 886 F.2d. 662 (4th Cir. 1989) (Voiding for vagueness a landfill citing law that allowed permit denial based on "public sentiment."); *State ex rel Casey's General Stores, Inc.* v. *City Council of Salem*, 699 S.W.2d. 775 (MO. App. 1985) (Void for vagueness doctrine applied to repudiate a liquor license ordinance which prohibited its issuance to stores "located outside the business district of the City." "Business district" was not defined.

[23] See Public Law 101-615, section 2(3).

[24] The Ordinance also requires vehicle marking "according to * * * the Resource Conservation and Recovery Act (RCRA)." We are unaware of any vehicle marking requirements prescribed by RCRA. Consequently, we are at a loss to know what marking the City is referencing.

the inequity of certain state or political subdivision requirements that treat hazardous waste differently from hazardous materials generally simply because they are hazardous wastes.[25] It has also found that combinations of requirements when applied to selected hazardous materials, constitute unauthorized prior restraints on shipments of such materials "that are presumptively safe based on their compliance with federal regulations." [26] Cumulatively, the requirements imposed by the Ordiance constitute unauthorized prior restraints on shipments of hazardous materials that are presumptively safe based on their compliance with federal regulations.

Therefore, the NSWMA/CWTI believes that DOT should find the requirements of the City Ordinance numbered 1 and 3(G) should be preempted for failing to be "substantively the same" as the federal standard pursuant to section 105, and the requirements contained in sections 2, 3(A), 3(B), 3(C), 3(F), and 4 preempted for failing the or the "obstacle" test pursuant to section 112 of the HMTA, as amended.

Certification

I hereby certify that a copy of this document has been forwarded to Edwin J. Adams, City Attorney, City Hall, 375 Carolina Ave., Chester, West Virginia, 26034.

Respectfully submitted,

Kevin Connors,

Chairman, Chemical Waste Transportation Institute.

Attachments

- Ordinance of the City of Chester, West Virginia Regarding the Transportation of Hazardous Waste
- Letter to DOT Regarding Partial Appeal of Inconsistency Ruling No. IR–32, Docket No. IRA–46

An Ordinance of the City of Chester, West Virginia Regarding the Transportation of Hazardous Wastes

Be it Ordained by the City Council of the City of Chester:

This enactment is intended to protect the health and safety of the municipality's citizens from unnecessary dangers posed by the transportation of hazardous waste by ensuring that (i) the transportation is effectuated in the safest possible manner, and (ii) in the event of an accident, that emergency response resources are in place, prepared, and informed of the hazardous waste cargo, to enable such emergency response resources to respond quickly and efficiently.

1. The term hazardous waste includes any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because such waste or combination of wastes are nondegradable or persistent in nature or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects, and any substance that is defined as a hazardous waste by the federal government or by the laws of this state.

2. Each hauler of hazardous waste (hereinafter referred to as a "hauler") must notify the chief of police twenty-four hours in advance of any hauling of hazardous waste within the municipality's limits, and then report to the police designated staging area as directed.

3. Other than travelling to the designated staging area, the hauler may not haul any hazardous waste within the municipality's limits unless the following conditions are met.

A. The chief of police, or his designated representative, must inspect the transporting vehicle for leaks and defects. The cost of such inspection must be paid in advance by the hauler according to a rate schedule established by the chief of police. In the event that any leak or defect is discovered, the transporting vehicle may not be moved unless one of the following events occur: (i) Any leak or defect is repaired to the satisfaction of the chief of police or his designated agent; or (ii) The hauler posts a ten million dollar cash bond, or a bond in a like amount guaranteed by a corporate surety acceptable to the chief of police or his designated representative. Nothwithstanding the foregoing, if the chief of police or his designated representative determines that any leak or defect will pose an unreasonable risk to the health and safety of the populace, then the transporting vehicle will not be permitted to leave the staging area until the requisite repairs are completed. In the event that the hauler elects to repair any leak or defect, it must do so within a reasonable amount of time to be determined under the circumstances by the chief of police or his designated representative, taking into account any condition that may adversely affect the health and safety of the community. If the hauler fails to repair any leak or defect within a reasonable amount of time as determined by the chief of police or his designated representative, the chief of police or his designated representative may cause the necessary repair to be effectuated with the cost of such repair to be borne directly by the hauler.

B. The hauler may only travel with a police escort, made up of one or more police vehicles as determined necessary by the chief of police or his designated representative. The cost of such escort shall be paid in advance by the hauler according to a schedule of costs established by the chief of police or his designated representative.

C. The hauler may only travel during times directed by the chief of police or his designated representative. Provided however, that the chief of police may not authorize the hauler to travel through the municipality during periods of air inversion or during periods of inclement weather, such as rain, sleet, snow, freezing conditions, and winds of forty miles per hour or more, including gusts. Nor shall the hauler be authorized to travel through the community when any of the foregoing weather conditions have occurred or are forecast to occur within forty-eight hours of the transportation. Nor shall the hauler be authorized to travel through the community during the period commencing one hour before and ending one hour after any elementary or secondary school within the municipality is in session. Nor shall the hauler be authorized to travel during the period commencing at sundown and ending at dawn unless such extra safety precautions deemed necessary by the chief of police or his designated representative are complied with, and the hauler posts a twenty million dollar cash bond, or a bond in a like amount guarenteed by a corporate surety acceptable to the chief of police or his designated representative.

D. The hauler's vehicle must be marked according to United States Department of Transportation and the federal Resource Conservation and Recovery Act (hereinafter "RCRA") rules and regulations.

E. The hauler's driver must have and exhibit upon request the hauler's RCRA manifest to the chief of police or his designated representative.

F. The hauler must travel in a safe manner as determined by the chief of police or his designated representative. Provided, the chief of police or his designated representative may not authorize the hauler's vehicle to travel within 150 feet of any vehicle other than the police escort vehicles. Provided further that the chief of police or his designated representative may not authorize a hauler's vehicle to travel in excess of ten miles per hour below the applicable posted speed limit. Provided further that the chief of police or his designated representative may not authorize any hauler's vehicle to travel within the municipality if the vehicle weighs within ten thousand pounds of any posted weight limitation, including weight limitations for bridges, tunnels, and roads.

4. Penalties: A. Any hauler that violates this enactment shall be fined not more than $5000 per violation, and shall pay the municipality three times the cost incurred by the municipality in disposing of the hazardous waste transported into this municipality by the hauler.

B. Any vehicle used to transport any hazardous waste into this municipality in violation of this enactment shall be forfeited to the municipality.

C. Upon the first conviction of any hauler for violating this provision, such hauler shall be prohibited from transporting any hazardous waste in this municipality for a period of one year; upon the second conviction, the hauler shall be prohibited from transporting any hazardous waste in this municipality for a period of two years; upon the third conviction, the hauler shall be permanently prohibited from transporting any hazardous waste in this municipality.

D. Any person, including any driver, who aids and abets any violation of this

[25] See 49 CFR 171.3(c).

[26] See IR–19, 52 FR 24404.

enactment shall be fined not more than $5000 per violation, or be imprisoned for a period not to exceed six months, or both.

5. Separability: A. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

First Reading: November 18, 1991.
Second Reading: December 2, 1991.
Passed and Adopted: December 2, 1991.

Sally Riley,

Mayor.

Carla Simcox,

City Clerk.

September 25, 1990

Travis P. Dungan,

Administrator, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001

RE: Partial Appeal of Inconsistency Ruling No. IR–32, Docket No. IRA–46

Dear Mr. Dungan: Enclosed please find a partial appeal submitted by the National Solid Wastes Management Association on behalf of its Chemical Waste Transportation Institute. The partial appeal requests that the Department initiate a proceeding to reverse two of the findings of consistency announced in inconsistency ruling no. IR–32 concerning the City of Montevallo, Alabama Code sections 7–44 and 7–46(d). I would appreciate your including a notice in the **Federal Register** inviting public comment on IR–32 for the purpose of the appeal.

If you or your staff have questions regarding the partial appeal, please contact me or John Turner.

Sincerely,

Cynthia Hilton,

Manager, Hazardous Waste Programs.

Enclosure.

cc:Steven R. Sears, City Attorney.

Before the United States Department of Transportation Research and Special Programs Administration

In the Matter of Docket No. IRA–46—Partial Appeal of Inconsistency Ruling No. IR–32, Docket No. IRA–46: Concerning City of Montevallo, Alabama Code, Sections 7–40 through 7–50

Partial Appeal of Petitioner, Chemical Waste Transportation Institute, of Inconsistency Ruling No. IR–32, Docket No. IRA–46

September 27, 1990.

I. Introduction

The Chemical Waste Transportation Institute ("CWTI"),[1] a component of the National Solid Wastes Management Association ("NSWMA") hereby appeals in part the August 28, 1990 decision of the Director, Office of Hazardous Material Transportation (Inconsistency Ruling No. 32). The CWTI requests that the Administrator of the Research and Special Programs Administration ("RSPA") find that a vehicle separation distance requirement, contained in section 7–44 of the Montevallo, Alabama Code, and a citizens band radio equipment requirement, found in section 7–46(d) of the Code, are inconsistent with and thus preempted by section 112(a) of the Hazardous Materials Transportation Act ("HMTA").

In the Inconsistency Ruling, see 55 FR 36736 (Sept. 6, 1990), the Director appropriately noted that the HMTA dramatically altered the traditional roles of political authorities with regard to hazardous materials transportation:

> In the HMTA's Declaration of Policy (section 102, 49 U.S.C. app. 1801) and in the Senate Commerce Committee report on section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation (S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974)). Under the HMTA, DOT has the authority to promulgate uniform national standards. While the HMTA did not totally preclude State or local action in this area, Congress intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the (Hazardous Materials Regulations ("HMR")), issued to implement the HMTA, severely restricts the scope of historically permissible State or local activity.

Id. at 36,737.

Applying these principles to the numerous requirements set forth in the Montevallo Code relating to the transportation of hazardous waste, the Director found several of the provisions to be inconsistent with the HMTA. The CWTI submits that the Director erred, however, in finding two local requirements—those imposing a 150-foot separation distance for hazardous waste-carrying vehicles and requiring that such vehicles be equipped with citizens band radios tuned to Channel 9—to be consistent with the Act and its implementing regulations.

II. The Separation Distance Requirement is Inconsistent With, and Accordingly Preempted by, the HMTA

Section 7–44 of the Montevallo Code requires that:

> No hazardous waste-carrying vehicle shall follow within 150 feet of any other vehicle when within the City limits, provided, that this section shall not apply to vehicles following state, county or city police vehicles.

The Director determined that the requirement is consistent with the HMTA, reasoning that "the HMR do not specify a separation distance for motor vehicles carrying hazardous materials" and that "no basis (exists) in this record for concluding that (the requirement) is inconsistent with the HMR." For the reasons that follow, the Administrator should find the separation distance requirement to be an impermissible obstacle to compliance with the terms and goals of the HMTA.

The absence of a separation distance provision in the federal Hazardous Materials Regulations does support a finding that the local ordinance satisfies the "dual compliance" test applied to preemption/inconsistency examinations under the HMTA. It is, clearly, possible to comply both with the HMR and the local requirement. The RSPA has, however, in light of the rulings of the United States Supreme Court, consistently acknowledged the existence of a second criterion—the "obstacle test"—for determining whether a state or local requirement is inconsistent with, and thus preempted by the HMTA. See 49 CFR 107.209(c)(2) (requiring that the test be applied under the Act). The obstacle test, like the dual compliance analysis, is "based upon, and supported by, United States Supreme Court decisions on preemption." 55 FR at 36737. As the Director noted:

> Application of this second criterion (the obstacle test) requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through RSPA's regulatory program.

Id.

While Congress did not expressly prohibit State or local regulation of the transportation of hazardous materials or unequivocally declare DOT's authority to be exclusive, a determination that non-federal measures are inconsistent may nevertheless be made through application of the obstacle test. The key factors in such a finding of preemption are the following:

(1) The aim and intent of Congress as revealed by the statute and its legislative history;

(2) The pervasiveness of the federal regulatory scheme as reflected in the

[1] Formerly the Chemical Waste Transportation Council.

legislation and as put into effect by the Department;

(3) The nature of the subject matter regulated and whether it demands exclusive federal regulation or uniformity in order to achieve national interests; and

(4) Whether the local requirement interferes with "the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 V.S. 52, 54 (1941); *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

Although no federal requirement addresses separation distances for motor vehicles carrying hazardous materials, an examination of the four factors enumerated above clearly justifies a finding that the unique local requirement is inconsistent. First, both the HMTA and its legislative history make clear that uniform, national safety standards were Congress' goal. The explicit purpose of the HMTA was "to improve the regulatory enforcement authority of the Secretary of Transportation to Protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 U.S.C. 1801; *id.* 1804(a) (DOT to issue regulations governing "any safety aspect" of the transportation of hazardous materials). Congress emphasized that a proliferation of disparate local rules for transporters engaged in interstate commerce would hinder achievement of the goals of increased safety and regulatory uniformity. See S. Rep. No. 1192, *supra*, at 37; *Kappelmann* v. *Delta Air Lines*, 539 F.2d 165, 169–70 (D.C. Cir. 1976) (need for national uniformity).

Second, the pervasiveness of the federal regulatory scheme is reflected in the scope and breadth of the Act. In *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983), the First Circuit Court of Appeals held that while a local safety regulation did not directly conflict with the terms of the HMTA, it was nonetheless inconsistent with "congressional purposes to secure a general pattern of uniform, national regulations, and to preclude multiplicity of State and local regulations and the potential for varying as well as conflicting regulations concerning hazardous materials transportation." The legislation issued a mandate to DOT to "eliminate the safety risks associated with every mode and aspect of transportation. Thus, DOT now regulates everything from the integrity of shipping boxes to the crash resistance of tank trunks, from the training of vehicle operators to the routing of radioactive cargos." Comment, Hazardous Waste at the Crossroads: Federal and State Transit Rules Confront Legal Roadblocks, 12 ELR 10075, 10078 (1982). Congress recognized that safety concerns were to be specifically addressed in federal regulations, and expected that the DOT would promulgate rules affecting every aspect of the transportation of hazardous materials. Accordingly, the Department in previous inconsistency rulings has correctly noted that "the absence of a federal regulation addressing the same subject as a challenged state requirement is not determinative of the requirement's consistency." Inconsistency Ruling 8, 49 FR 46637 (Nov. 27, 1984).

Third, in view of the intercity and interstate framework within which transportation companies operate, consistent safety requirements are necessary in order to "achieve the uniformity vital to national interests." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963). Finally, locally-established distance separation requirements which vary from community to community and are based exclusively upon local interests clearly operate as obstacles to the accomplishment of the full purposes and objectives of Congress. Congress authorized DOT to pervasively regulate the field and to issue regulations governing every aspect of the transporation of hazardous materials. It did not envision the frustration of a natinal policy of uniformity by the promotion of disparate local requirements concerning matters not yet specifically addressed in federal regulations implementing the Act.

The Montevallo requirement cannot stand. If states or localities were to create a patchwork of different separation distance regulations—ostensibly in order to promote safety—the congressional purposes would be frustrated and transport safety would, in fact, be hampered. An interpretation of the HMTA as preempting only local regulations that actually conflict with the HMR would render the Act's preemption provisions and procedures essentially meaningless.

Accordingly, and in view of the federal interests discussed above, the Department has upheld only those occasional community-specific measures that can be justified as legitimate and necessary controls. See, e.g., Inconsistency Ruling No. 3, *infra*. Consistent with Congress' insistence that local regulation of hazardous waste transportation be, to the extent possible, made unnecessary, *Preamble to Inconsistency Rulings IR–7 through IR–15*, 49 FR 46632, 46633 (1984), the burden of asserting and demonstrating an adequate overall safety justification should squarely be placed upon the locality. Montevallo's only formally stated reason for adoption of the requirement was to facilitate transportation safety in order to reduce the "possibility" of a "spill" of hazardous materials. The 150–foot distance requirement applies at all times of day, in all weather and traffic conditions, and with regard to all vehicles except those operated by the State of Alabama, Shelby County, or Montevallo police. Yet a vehicle separation requirement that truly promotes the goal of traffic safety would undoubtedly recognize, as a number of studies have concluded, [2] that what constitutes a safe stopping distance depends upon factors such as speed, weight of the load carried by the vehicle, traffic road and weather conditions, and other criteria. Moreover, if 150 feet is indeed a minimum safe stopping distance, it is both illogical and unjustified to exclude state, county, or city police vehicles and to apply the provision only to hazardous waste transport vehicles. See Southern Pacific Transporation Co. v. *Public Service Commission of Nevada*. No. 88–15541 (9th Cir. July 18, 1990) (finding Nevada regulations inconsistent with HMTA; court noted that "the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others").

In Inconsistency Ruling 3, the RSPA questioned "the advisability of encouraging the driver to constantly direct his attention away from the proximity of his vehicle." 46 FR 18918, 18923 (Mar. 26, 1981). In order to conform with the Montevallo provision, a driver of a hazardous waste-carrying vehicle must in practice do more than constantly avert his attention from his vehicle in order to estimate distance. He must also attempt to comply with an inflexible separation requirement wholly detached from any local or site-specific condition he may encounter. In fact, the driver is forced—particularly in periods of heavy traffic in which vehicles are frequently entering and exiting from the highway—to make abrupt changes in speed and take other necessary actions which could contribute to an accident. At best, the requirement is burdensome and unfounded. At worst, it is an

[2] See, e.g., Radlinski Braking Performance of Heavy U.S. Vehicles, SAE Technical Paper Series No. 870492, 1987.

impediment to the safe transportation of hazardous materials.[3]

Finally, if uniform separation distance requirements are consistent with the HMTA, such provisions can hardly promote the national goal of safe transportation if reasonable notice is not afforded vehicle operators. If the Administrator finds the Montevallo provision to be consistent with the HMTA, the CWTI urges that the determination be stipulated on the provision of reasonable notification of the requirement to vehicle operators. See Inconsistency Ruling at 55 FR 36745 ("the 'headlights on' requirement is a valid local requirement as long as (1) reasonable notice thereof is given to vehicle operators . . .").

III. The Local Requirement That Hazardous Waste-Carrying Vehicles be Equipped With Citizens Band Radios is Inconsistent With, and Thus Preempted by, the HMTA

The CWTI believes it is essential that local emergency response authorities have access to information that will help them identify and properly respond to transportation accidents involving hazardous materials. The development of a national system of hazardous materials response teams and the successful operation of emergency information services depends upon the recognition of uniform methods of emergency notification and the participation of local authorities. This case, however, presents a local requirement that seeks to advance the laudable aim of local notification through unlawful means. Section 7–46(d) of the Montevallo Code requires that all vehicles carrying hazardous waste within the City limits be equipped with citizens band radios. The Director determined that the provision is, in the case of non-radioactive hazardous materials transportation, consistent with the HMTA. He concluded that "except for radioactive materials transportation, the HMR does not impose any Federal requirement with regard to radios." The Ruling acknowledged that "the record contains no information concerning how this local requirement enhances safety." 55 FR at 36745.

As noted above, the absence of a specific federal regulation addressing the use of citizens band radios in the case of non-radioactive hazardous materials transportation should not end the preemption inquiry. A proliferation of community-specific communications equipment measures, each insisting upon a particular type of telephone, radio, or other device, would be incompatible with the congressional insistence upon uniformity. Similarly, in light of Congress' insistence upon the development of effective nationwide regulations, the failure of Montevallo to articulate a need for the requirement arising out of demonstrable local conditions fully justifies condemnation of the provision. The City has offered no proof that the customary means of notification—the telephone—cannot serve as an effective method of emergency communication.

Section 7–46(d) is inconsistent with the HMTA for other, equally compelling, reasons. Because the vast majority of hazardous waste-carrying vehicles are not equipped with citizens band radios, the Montevallo provision effectively acts as a routing requirement. Vehicles without installed and operational citizens band radios may not be utilized for the transport of hazardous waste into or through the City. The Department has consistently ruled that atypical local vehicle equipment requirements may discourage shippers from using otherwise desirable routes. It has, accordingly, found that local measures which call for additional equipment constitute the equivalent of impermissible routing regulations. See, e.g., Inconsistency Ruling 8, 49 FR 46637, 46638 (1984). See also former 44 CFR part 177, appendix A, VI(D) (1984) (rule inconsistent with the HMTA if it requires additional or special personnel, equipment or escort); Inconsistency Ruling 6, 48 FR 760765 (1983) (even threat of delay due to unique local requirements may divert shippers into other routes, thus imposing transportation burdens on unprepared jurisdictions); Inconsistency Ruling 3, 46 FR 18918, 18921 (1983) (same).

Montevallo's requirement is, if anything, more onerous than a typical routing provision. Such regulations generally prohibit the movement of hazardous materials in certain highly populated areas while providing for alternative transportation routes. Section 7–46(d), however, renders illegal all hazardous waste transportation in vehicles not equipped with radios, irrespective of population density. Similar equipment-related restrictions have likewise been condemned by the federal courts. See, e.g., *American Trucking Ass'ns* v. *City of Boston*, No. 81–628–MA (D. Mass. 1981) (city rule requiring vehicles transporting hazardous materials to be affixed with certain decals and placards not recognized by federal regulations inconsistent with the HMTA).

Finally, the Supreme Court has emphasized that, even in the case of an unquestionable safety hazard, a state or local government may not attempt to resolve the problem by effectively exporting it to another jurisdiction. *Kassel* v. *Consolidated Freightways*, 450 U.S. 662 (1981). The Department has appropriately acknowledged that the HMTA requires State and local governments to "act through a process that adequately weighs the full consequences of its choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." Inconsistency Ruling 3, 46 FR 18918, 18922 (1981). Montevallo did not impose an outright ban on shipments of hazardous waste in order to divert traffic elsewhere. Yet requirements such as section 46(d) significantly raise the costs of transporting through the community and put transporters to the expense of adding additional and unnecessary equipment to vehicles. Movements of hazardous waste are, accordingly, likely to be diverted randomly rather than in a planned pattern. Given that a crucial purpose of the HMTA is to prevent unnecessary diversion, the mere possibility that the Montevallo requirement will place the burdens of hazardous waste transportation onto other jurisdictions necessitates rejection of section 46(d).

Certification

I hereby certify that a copy of this document has been forwarded to Steven R. Sears, City Attorney, Montevallo, Alabama at the address previously specified in the **Federal Register.**

Respectfully submitted,

John H. Turner,

Association Counsel, National Solid Wastes Management Association.

3. Public Comment

Comments should be limited to the issue of whether the cited requirements of the City of Chester, West Virgina, are preempted by the HMTA. Comments should specifically address the "substantively the same," "dual compliance" and "obstacle" tests described in the "Background" section, as well as the highway routing standards under HMTUSA (49 App U.S.C. 1804(b)).

[3] See Inconsistency Ruling at 55 FR 36744 (finding time-of-day restrictions inconsistent with the HMTA given Montevallo's failure to demonstrate an "adequate overall safety justification"). The Montevallo separation requirement differs, both in form and effect, from the Boston provision addressed in Inconsistency Ruling 3. The Boston ordinance did not attempt to establish a universal, inflexible distance requirement. Instead, the regulation merely empowered the City to regulate "the distance that must be maintained between vehicles in transit."

Persons intending to comment on the application should review the standards and procedures governing consideration of applications for preemption determinations found at 49 CFR 107.201–107.211 (as amended at 56 FR 8616, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991).

Issued in Washington, DC, on March 26, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety Research and Special Programs Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 92–7771 Filed 4–3–92; 8:45 am]

BILLING CODE 4910–60–M

federal register

Monday
April 6, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Historically Black Colleges and Universities Program; Notice of Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3377; FR-3153-N-01]

Funding Availability for Historically Black Colleges and Universitites Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1992.

SUMMARY: This NOFA announces funding for the Historically Black Colleges and Universities (HBCU) Program. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding available amounts, objectives, eligibility and selection criteria;

(b) Application processing, including how and when to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: The actual application due date and time will be specified in the application kit. The due date will be a date no earlier than 120 days from the first date that applications are made available.

FOR AN APPLICATION KIT CONTACT: Connie Southerland Collins, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 401-2032. The TDD number for the hearing impaired is (202) 708-2565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The control number for information described in this document is 2535-0084.

I. Purpose and Substantive Description

A. Authority

This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act). The program is governed by regulations contained in 24 CFR 570.400, 570.404 and 24 CFR part 570, subparts A, C, J, K and O.

B. Allocation Amounts and Form

The Fiscal Year 1992 appropriation for the HBCU program is $4.5 million. The maximum amount awarded to any applicant will be $500,000. The awards will be made in the form of grants.

C. Objectives

The objectives of this program are:

1. To help HBCUs expand their role and effectiveness in addressing community development needs, including neighborhood revitalization, housing and economic development in their localities, consistent with the purposes of the 1974 Act.

2. To help HBCUs address the priority needs of their localitites in meeting the following HUD priorities:

- Expand homeownership and affordable housing opportunities.
- Create jobs and economic development through enterprise zones.
- Empower the poor through resident management.
- Enforce fair housing for all.
- Help make public housing drug free.
- Help end the tragedy of homelessness.

In order to qualify for funding, an applicant will have to demonstrate how it will meet objective #1. Applicants who meet objective #2 in at least one priority area will receive higher scores in the rating process.

D. Eligibility

1. Eligible Applicants

Only HBCUs determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989, are eligible to submit applications.

2. Eligible Activities

Activities that may be funded under this NOFA are those activities eligible for CDBG funding. They are listed in 24 CFR 570.201 through 570.206, copies of which will be included in the application kit. Basic eligible activities include acquisiton and disposition of real property, public facilities and improvements, rehabilitation assistance, special economic development activities, planning and other activities. Those applicants planning to use funds for the provision of public services are bound by the statutory requirement that not more than 15% of the total grant amount be used for public service activities. Thus, project applications that exceed this amount will not be in compliance with program regulations, and will not be considered for funding.

Activities that are ineligible for funding are listed in 24 CFR 570.207. Additionally, an activity that otherwise is eligible under 24 CFR 570.201-206 may not be funded if State or local law requires that it be carried out by a governmental entity.

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve applications for any activities that would be located or carried out in the Coastal Barrier Resources System.

For several years, under the technical assistance grants authority of section 107 of the 1974 Act, HBCUs have been funded to provide technical assistance to units of general local government to increase the effectiveness of such entities in planning, developing and administering assistance under the CDGB program. While HBCUs will continue to be eligible to compete for such technical assistance grants, the HBCU program to be funded under this Notice is not for the provision of technical assistance, but the broader range of eligible activities described above. This new HBCU program was authorized as a separate special purpose grant program by the HUD Reform Act of 1989.

3. Locality

This program is designed to assist HBCUs to expand their role and effectiveness in addressing community development in their localities. The term locality will differ for each HBCU, depending on its location. It includes any city, county, town, township, parish, village, or other general political subdivision of a State within which the HBCU is located. An HBCU located in a metropolitan statistical area, as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire area.

4. Local Approval

Since eligible activities must take place in a locality (as defined above), each local government where an activity is to take place must approve the activity and state the activity is not inconsistent with its community development plan or program, or Comprehensive Housing Affordability Strategy (CHAS) under 24 CFR part 91 if, in fact, the activity is housing related. This approval and finding must accompany each application and may take the form of a letter by the chief executive officer of the locality or

resolution by the legislative body of the locality.

5. Environmental Review

HUD will conduct an environmental review in accordance with 24 CFR part 50 before giving its approval to a proposal. Applicants are urged to be cognizant of this factor in preparing their proposals.

E. Ranking Factors and Rating

The factors set forth below will be used by the Department to evaluate applications. Each application must contain sufficient technical information to be reviewed for its technical merits. The score of each factor will be based on the qualitative and quantitative aspects demonstrated in each. The maximum number of points for each factor (out of a total of 100 points) is as follows:

Ranking Factors

1. Addressing the Objectives

(Maximum Points: 20) The extent to which the applicant addresses the objectives of this program as specified in I.C. above. In rating this factor, the Department will consider:

a. The extent to which the applicant demonstrates that the proposed activities and program will expand its role and effectiveness in addressing community development needs in its locality(ies).

b. The extent to which the applicant's proposed activities will address high priority needs in each locality's community development plan or program, or Comprehensive Housing Affordability Strategy (CHAS) under 24 CFR part 91 if, in fact, the activity is housing related.

c. The extent to which the applicant's proposed activities address one or more of the HUD priorities specified in I.C.2. above.

2. Substantial Impact in Achieving Objectives

(Maximum Points: 25) The extent to which the applicant demonstrates that the proposed activities will have a substantial impact in achieving the objectives in I.C. In rating this factor the Department will consider:

a. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on increasing its role and effectiveness in addressing the community development needs of its locality.

b. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on meeting one or more of the stated HUD priorities.

c. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on the community development goals and programs of the locality in which the activity will take place.

3. Special Needs of Applicant or Locality

(Maximum Points: 10) The extent to which the applicant demonstrates that the applicant or locality has special needs which will be addressed or met by the proposed activities, particularly with respect to benefitting low- and moderate-income persons. In evaluating this factor, HUD will consider the immediacy of the special need in the locality, particularly with respect to low- and moderate-income persons.

4. Technical and Financial Feasibility and Match

(Maximum Points: 25) The extent to which the applicant demonstrates the technical and financial feasibility for achieving the objectives, including local support for the activities proposed to be carried out in the locality and any matching funds proposed to be provided from sources other than the applicant. In evaluating applications, HUD will consider:

a. The extent to which the applicant demonstrates the technical feasibility for achieving the objectives within the program period proposed.

b. The extent to which the applicant demonstrates the financial feasibility for achieving the objectives.

c. The extent to which the applicant demonstrates local support for the activities to be carried out in the locality as evidenced by commitment of matching funds proposed to be provided from sources other than the applicant; commitment of local government or other staff; in-kind resources; or related governmental actions.

5. Capacity

(Maximum Points: 20) The extent to which the applicant demonstrates the capacity to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any prior HUD-assisted projects or activities. In evaluating applications, HUD will consider:

a. The extent to which the applicant's proposed management plan: Clearly delineates staff responsibilities and accountability for all work required; presents a work plan with a clear and feasible schedule for conducting all project tasks; presents a reasonable and adequate planned budget as reflected in the budget-by-task and supporting rationale and justification for the budget.

b. The extent to which the applicant demonstrates timely and satisfactory recent performance in community development activities, including HUD-assisted projects or activities, of the same or similar type to those proposed in the application.

c. The extent to which the applicant demonstrates the capacity, background and experience of the program manager and key staff to carry out satisfactorily the proposed activities in a timely fashion.

F. Selection Method

1. Threshold Areas

An applicant will have to demonstrate how it meets objective #1 of this HBCU program (helping HBCUs expand their role and effectiveness in addressing community development needs in their localities) in order to qualify for evaluation and ranking. Activities which are not eligible for funding under this program (see I.D.2 above) will not be funded.

2. Ranking Process

Applications for funding under this Notice will be evaluated competitively, and awarded points based on the factors identified above. The Department will rank the applications in descending order according to score. Application will be funded in rank order, until all available funds have been obligated, or until there are no acceptable applications.

3. HUD Flexibility

In the case of proposals of approximately equal merit, HUD retains the right to exercise discretion in selecting projects that would best serve the program objectives, with consideration given to the needs of localities, types of activities proposed, equal geographical distribution, and program balance. These factors will be given equal consideration.

II. Application Process

A. Obtaining and Submitting Applications

Application kits will be available no earlier than 30 days from the date of publication of this Notice. Application kits must be requested in writing from: Connie Southerland Collins, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, or by facsimile machine to the following number: (202) 401–2032. The TDD

number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.)

Completed applications must be submittted to the address above. One copy of the application must be submitted to the HUD Field Office with jurisdiction for the locality in which the applicant is located.

B. Application Deadline

An application for funding under this Notice must be received by the date and time specified in the application kit. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

III. Checklist of Application Submission Requirements

A. Document Submissions

Each application must include an original and two copies of the following documents: (An additional copy is to be submitted to the appropriate HUD Field Office as specified above.)

1. Standard Form 424 (Request for Federal Assistance) signed by the Chief Executive Officer of the HBCU submitting the application.
2. A budget by task.
3. A certification form.
4. A description of the activities and their location proposed to be carried out, including a timetable listing tasks and milestones. A management plan delineating staff responsibilities and a work plan must be included. If any match is to be provided, the type, amount, and source should be shown.
5. A description of how the applicant meets each of the ranking factors detailed in section I.E. above.
6. The letter of locality approval required in I.D.4 above.
7. If matching funding is to be provided, a letter from the Chief Executive Officer of the locality, corporation or other entity providing the match certifying as to the type, amount, and timing of the match.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the Department shall notify the applicant in writing that the applicant has 14 calendar days from the date of the written notification to submit the missing item, or correct the technical mistake. If the applicant does not submit the missing item within the required time period, the application will be ineligible for further processing.

The 14-day cure period pertains only to nonsubstantive technical deficiencies or errors. Any deficiency capable of being cured shall only involve an item that is not necessary for the Department's ability to assess the merits of an application under the ranking factors set forth in this NOFA.

V. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment had been made for the FY 1991 NOFA in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Since the FY 1992 NOFA is substantially identical to the FY 1991 NOFA, the FY 1991 NOFA is appropriately applicable to the FY 1992 NOFA. This FONSI is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

(b) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits HBCU applicants to expand their role in addressing community development needs in their localities and does not impinge upon the relationships between the Federal government, and State and local governments.

(c) Family, Executive Order 12606

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document does not have potential for significant impact on family formation, maintenance, and general well-being. The notice only solicits HBCU to apply for funding to address community development needs in their locality. An impact on the family will be indirect and beneficial in that better planning of community development needs should result. The HBCU Program is listed in the Catalog of Federal Domestic Assistance under number 14.237.

(d) Section 102 HUD Reform Act; Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(e) Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature

to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d); 24 CFR 570.404.

Dated: March 27, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–7810 Filed 4–3–92; 8:45 am]

BILLING CODE 4210–29–M

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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).

H.J. Res. 456/P.L. 102-266

Making further continuing appropriations for the fiscal year 1992, and for other purposes. (Apr. 1, 1992; 106 Stat. 92; 8 pages) Price: $1.00

H.J. Res. 272/P.L. 102-267

To proclaim March 20, 1992, as "National Agriculture Day". (Apr. 2, 1992; 106 Stat. 100; 2 pages) Price: $1.00

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
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*1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
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27 Parts:			
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200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
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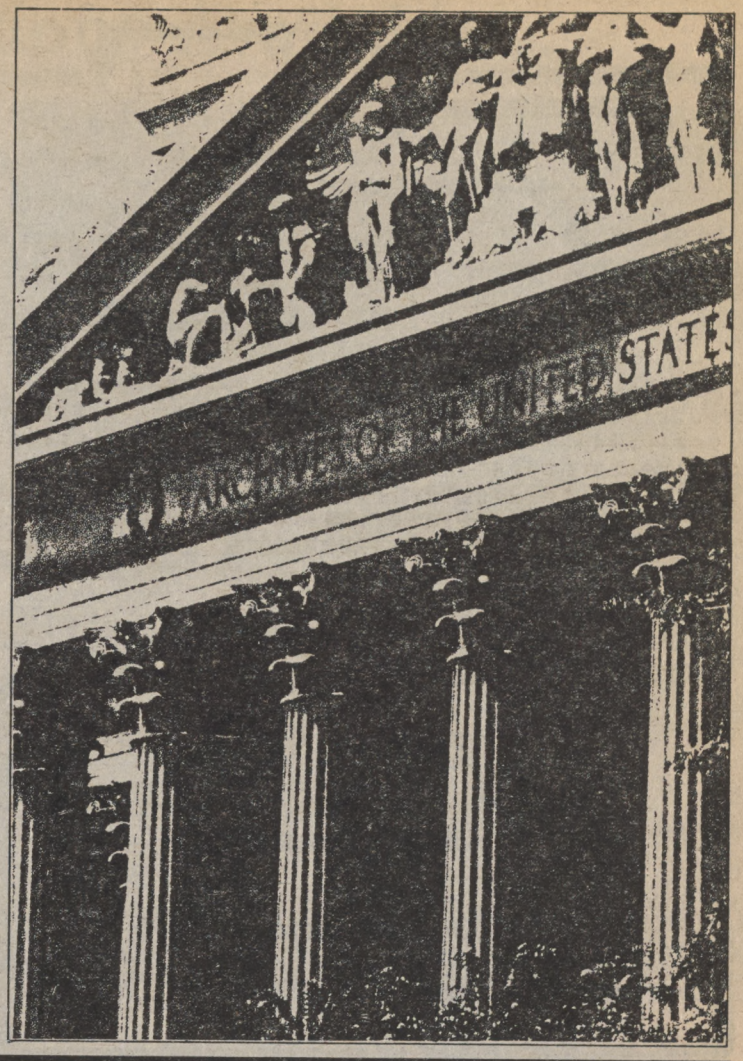

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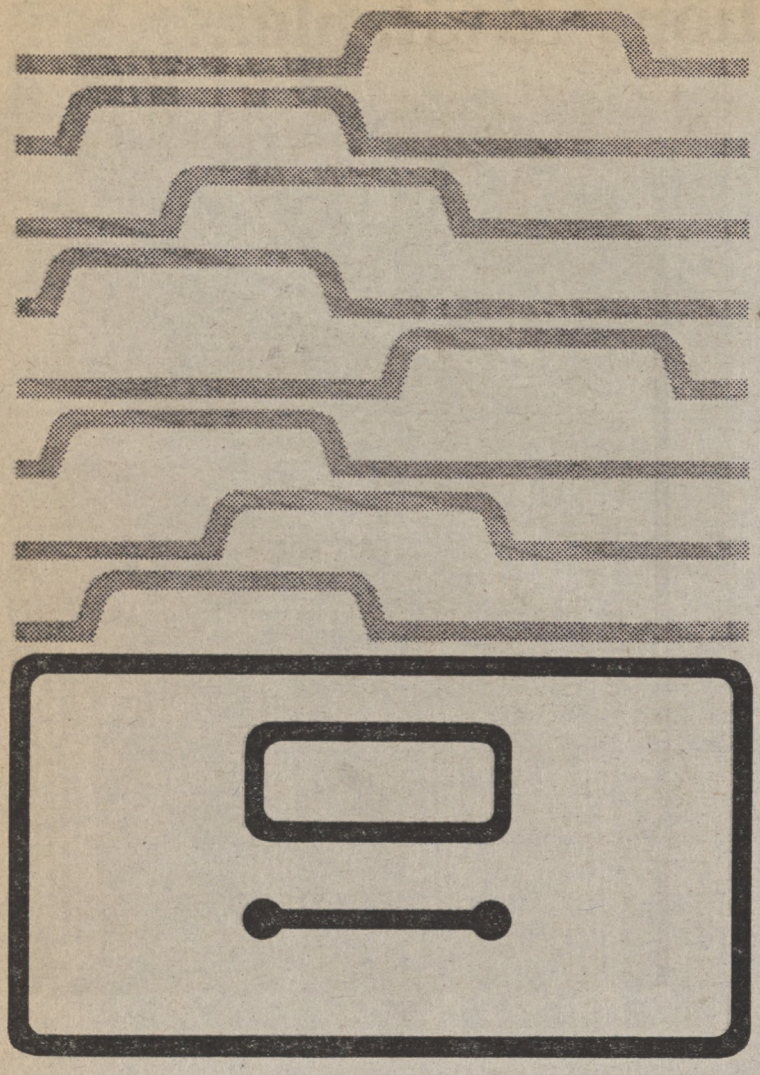

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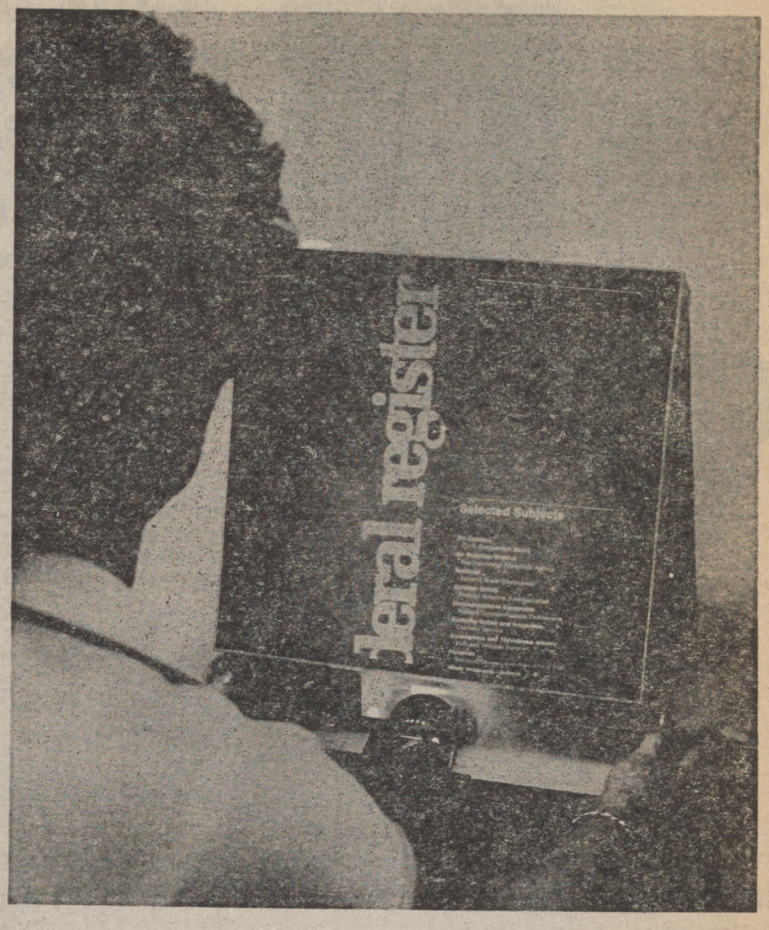

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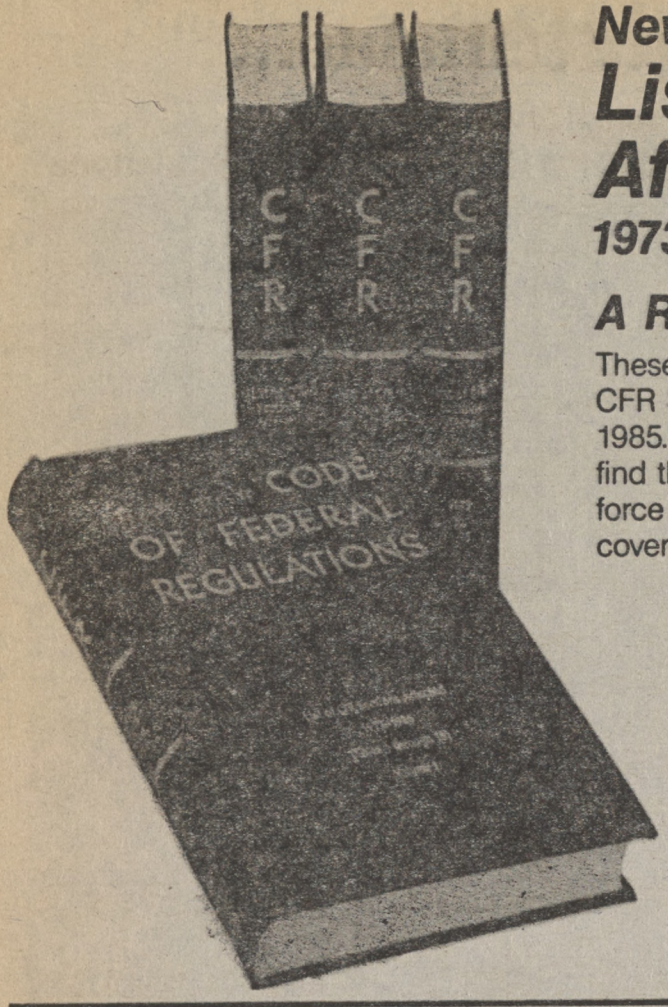

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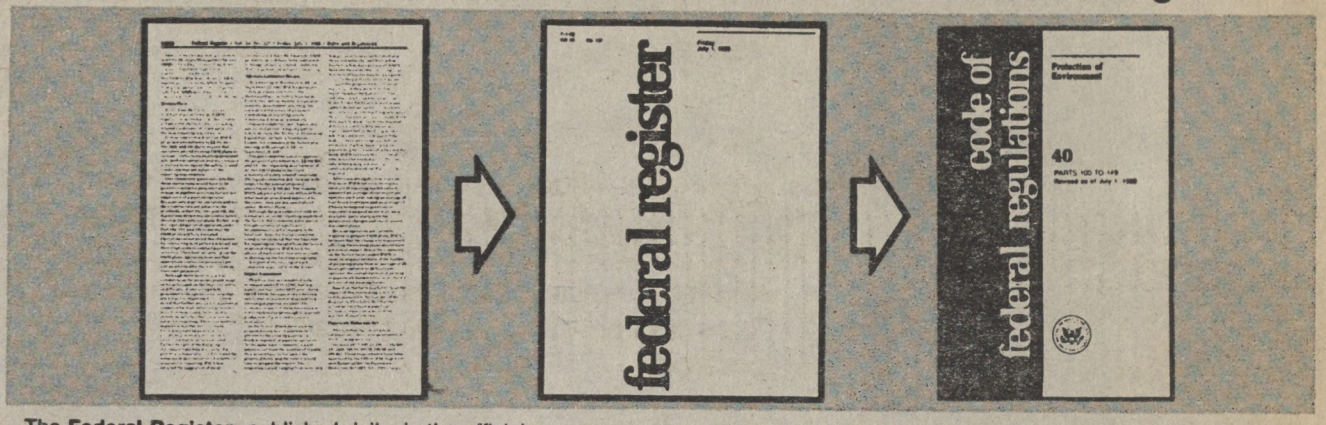

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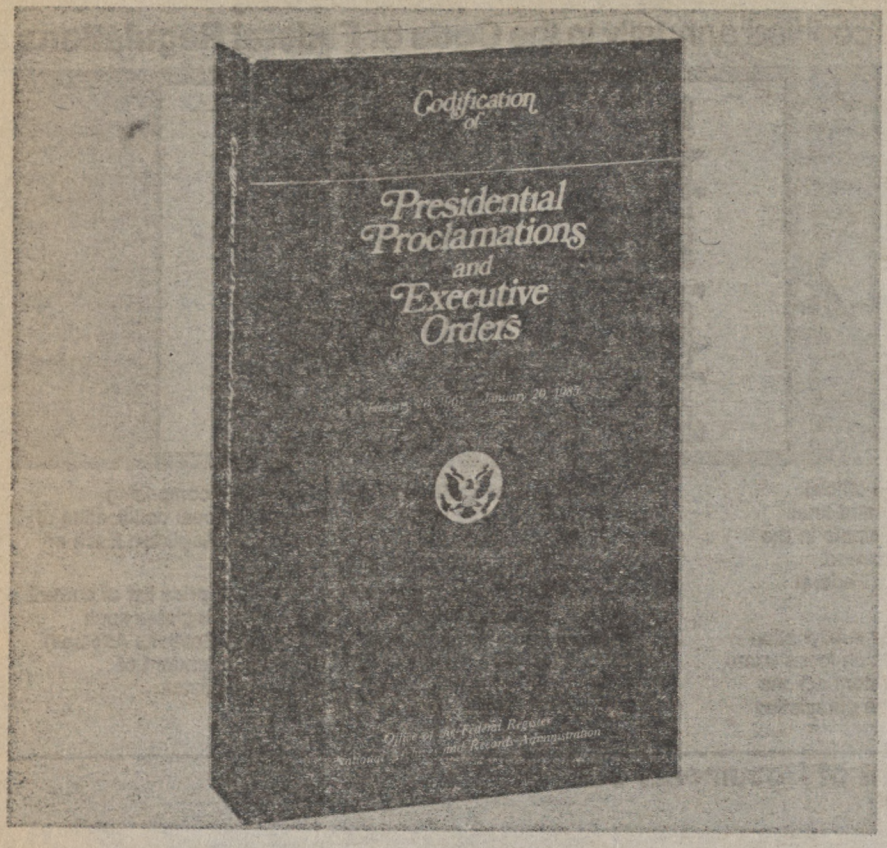

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